

# EXHIBIT 9

# **In the Matter of**

Case No.: 1:21-cv-08594-JHR

**ROSATI**

**v.**

**LONG ISLAND RAILROAD, et al.**

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**Deposition of Benjamin Gallup**

*Thursday, September 7, 2023*

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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STEVEN ROSATI, an individual,  
  
Plaintiff,

-against-

Case No.:  
1:21-cv-08594-JHR

LONG ISLAND RAILROAD,  
METROPOLITAN TRANSIT AUTHORITY,  
and PATRICK J. FOYE, individual,

Defendants.

-----X

September 7, 2023  
2:14 p.m.

Examination of BENJAMIN GALLUP, held pursuant  
to Notice, held via Zoom conference, before  
Ruthayn Shalom, a shorthand Reporter and Notary  
Public within and for the State of New York.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

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ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

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2 IT IS HEREBY STIPULATED AND AGREED, by  
3 and between the attorneys for the respective  
4 parties hereto, that this examination may be  
5 sworn to before any Notary Public.

6  
7 IT IS FURTHER STIPULATED AND AGREED that  
8 the sealing and filing of the said examination  
9 shall be waived.

10  
11 IT IS FURTHER STIPULATED AND AGREED that  
12 all objections to questions except as to form  
13 shall be reserved for trial.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

4

1 B. Gallup

2 B E N J A M I N G A L L U P, having  
3 been first duly sworn by Ruthayn Shalom, a Notary  
4 Public of the State of New York, and stating his  
5 address as 93-02 Sutphin Boulevard, Jamaica,  
6 New York 11434, was examined and testified as  
7 follows:

8 EXAMINATION BY

9 MR. UHRICH:

10 Q Mr. Gallup, my name is Craig Uhrich. I'm  
11 an attorney for Steven Rosati. I guess my first  
12 question for you today is -- well go ahead and state  
13 your name for the record.

14 A Benjamin Gallup.

15 Q How would you like me to refer to you  
16 today?

17 A Ben is fine.

18 Q Wonderful. Have you ever been deposed  
19 before, Ben?

20 A No, I have not.

21 Q Let me go over kind of the process. It's  
22 a question and answer format. I will ask questions  
23 for you to answer. Obviously, you have counsel  
24 there who can object if they want to. Since we are  
25 doing this remotely, sometimes issues come up where

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

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B. Gallup

you can't hear me or can't read a document or whatever. If that happens please let me know. Also sometimes I just don't talk very well. If I say something stupid and you don't understand, feel free to let me know and I will try to rephrase.

The other thing since we are doing this remotely is we have a court reporter. I will try, and I would ask you to try as well, to let me finish talking before you talk and vice versa so that the court reporter can keep up with us. Similarly, she will need you to answer orally rather than head nods or head shakes because she can't record those on her transcript.

A Okay.

Q The other thing I will tell you is as we go along at any point you need a break let me know. Usually what will happen if there is a question pending, I will ask you to go ahead and answer the question before we take a break. Otherwise any reason you need a break let me know.

A Thank you.

Q Great. So let's start off are you currently employed?

A Yes, I am.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

6

1 B. Gallup

2 Q How are you employed?

3 A By the Long Island Railroad.

4 Q What is your position there?

5 A My current title is superintendent of  
6 train service.

7 Q During the time that Mr. Rosati had  
8 various disciplinary things going on, was that your  
9 title at the time as well or has it changed since  
10 then?

11 A It's changed since then. I believe at the  
12 time it was lead transportation manager of onboard  
13 revenue compliance.

14 Q Wonderful. Today when you talk about your  
15 job, I will generally be talking about your job at  
16 the time of the Rosati instance. If I want to know  
17 something more current I will ask it that way.

18 A Okay.

19 Q So how long have you been with the  
20 Railroad?

21 A I started in 2007.

22 Q What position did you start in?

23 A I started as an assistant conductor.

24 Q Can you give me kind of a short synopsis  
25 of your progress through the Railroad to where you



ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

7

1 B. Gallup

2 are now?

3 A I started as an assistant conductor, I  
4 qualified as a conductor, I then took a job as a  
5 special duty conductor, I then became a  
6 transportation manager, I became a lead  
7 transportation manager, I then was a different type  
8 of lead transportation manager, and now I'm the  
9 superintendent of train service.

10 Q I noticed in taking these depositions that  
11 there is a lot of titles that sound very similar to  
12 me. If I get confused, I apologize for that.

13 A All good.

14 Q At the time of -- well let me strike that  
15 and ask a different question.

16 Do you know who I'm referring to when  
17 I refer to Steven Rosati?

18 A Yes, I do.

19 Q In looking at the documents it looks like  
20 you had a fair amount of dealings with him?

21 A That's correct.

22 Q At the time you were dealing with him in  
23 the late 2020 early 2021 timeframe, what were your  
24 job duties at the time?

25 A I was the lead transportation manager of

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

8

1 B. Gallup

2 onboard revenue compliance. My job involved -- I  
3 had five managers that worked under me and we were  
4 involved in observing conductors and assistant  
5 conductors for various reasons mainly pertaining to  
6 fare collections, collecting fare onboard the  
7 trains, but because my manager and myself observed  
8 them onboard trains, it was also other things. Hand  
9 signs, door operations, absence control, various  
10 other things, but mainly focusing on the fare  
11 collection side of things.

12 Q Earlier today I talked to Mr. Damato. Do  
13 you know who he is?

14 A Stephen Damato?

15 Q Yes.

16 A Yes, I do.

17 Q I have also -- let me ask you this first:  
18 What is your role in relationship to him?

19 A We are at the same level. We are both  
20 superintendent level. What we deal with -- what our  
21 job responsibilities are are different. He deals  
22 with the crew office, absence control on a  
23 superintendent level. My superintendent level deals  
24 with the conductors, assistant conductors and ticket  
25 collectors onboard the trains.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

9

1 B. Gallup

2 Q So would I be correct then if in my head I  
3 was thinking of you as a more of a person that the  
4 conductors report to versus say Mr. Damato?

5 A In the Railroad I don't deal with  
6 conductors every single day, but, yes, they all fall  
7 under me. The railroad is a very self-managed  
8 environment. Conductors report to where they are  
9 supposed to report. They do their jobs on their own  
10 without seeing any manager from my area or any area,  
11 but they do all fall under me in the organization  
12 chart currently, not in my old position but  
13 currently.

14 Q What about in your old position?

15 A The way the Railroad works, the  
16 superintendent of train service has two managers  
17 that fall under them. One is the fare collection  
18 manager which I was during this time and one is the  
19 train service manager. Once again they both  
20 supervise, observe the managers, and those managers  
21 observe the conductors, but their responsibilities  
22 and roles are a little different. They are both  
23 groups and both lead managers are out watching  
24 conductors, supervising conductors, observing  
25 conductors.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

10

1 B. Gallup

2 Q So at the time that these Rosati issues  
3 were going on, what was your role in terms of  
4 discipline of conductors and assistant conductors?

5 A So at that time when I worked under the  
6 superintendent of train service, there was a large  
7 portion of that time where the lead manager of train  
8 service was out injured so I was sort of doing  
9 double duty at one point, and sometimes the  
10 discipline process it was issues related to fare  
11 collection so it would have fallen under me anyway  
12 because train service is fare collection. Because  
13 some of the disciplinary issues involved fare  
14 collection, I was involved and then because the  
15 person that was in the train service lead position,  
16 she was out injured at one point and then she came  
17 back and was out injured again and then she ended up  
18 retiring. I was doing double duty as both lead  
19 managers.

20 Q I also see a number of references to I  
21 believe it's Mike Bendick?

22 A Correct.

23 Q Do you know who that is?

24 A Yes, I do. He's superintendent of train  
25 service when I was the lead.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

11

1 B. Gallup

2 Q What would he have been in relation to you  
3 at that time then?

4 A He was who I reported to at that time.

5 Q Your direct report?

6 A Correct.

7 Q Very good. Between the two of you if  
8 there had been a disciplinary issue, how would the  
9 duties between the two of you been divided up?

10 A He would have the ultimate say in the  
11 discipline. I was there more of a guiding role  
12 assisting him with maybe I knew more about the case,  
13 maybe I knew more about the individual, I had been  
14 on the trains more recently. I knew some people he  
15 didn't know. My position was more out in the field  
16 so I had more hands on and would support him and  
17 give him information when he was making disciplinary  
18 decisions.

19 Q So then I assume that you had a fair  
20 number of communications with Mr. Bendick regarding  
21 Rosati?

22 A That's right.

23 Q I have a couple of other people. Did you  
24 ever communicate with Mr. Damato regarding  
25 Mr. Rosati?

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

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B. Gallup

A Not that I recall. Not that I recall.

Q What about Ms. Walsh?

MR. SHEA: Objection.

A I don't know Ms. Walsh.

Q Okay, that's fine. That's what I'm trying  
to figure out.

Do you know a Mr. Eng, E-n-g?

A Are you referring to the former president  
of the Railroad?

Q Yes.

A I know who he is. I don't know him. I  
never dealt with him personally.

Q Is it fair to say you never would have  
communicated directly with him about Mr. Rosati?

A That's correct. I never communicated with  
him.

Q Did you ever communicate directly with a  
Mr. Gallup regarding Mr. Rosati?

A I'm Mr. Gallup.

Q Sorry, I'm horrible with names.

So when you were dealing with  
Mr. Rosati in your communications with Mr. Bendick,  
would that have been -- let me ask it a different  
way.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

13

1 B. Gallup

2 Would you have had any decision  
3 making in those communications or were you basically  
4 reporting and Mr. Bendick would have gone from  
5 there?

6 A More reporting to just whether if he had a  
7 question about a specific role or a specific  
8 observation that anybody would have seen. I was  
9 more of a supporting role like that. It was  
10 ultimately his decision and the trial officer's  
11 decision as far as the discipline.

12 Q So obviously in looking at the documents  
13 there were a number of disciplinary cases brought  
14 against Mr. Rosati and so I'm guessing you spent a  
15 fair amount of time with those; is that correct?

16 MR. SHEA: Objection.

17 A I remember -- I don't remember all of the  
18 them. I remember a few different cases coming  
19 through -- noncompliances as we refer to them coming  
20 through.

21 Q Before his disciplinary issues began, did  
22 you have contact with Mr. Rosati?

23 A As a manager that was out in the field I  
24 come across him here and there onboard trains. As a  
25 manager I was supposed to go out and ride a certain

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

14

1 B. Gallup

2 amount of trains. I know I dealt with him in  
3 instances like that. I do know that I knew who he  
4 was when the discipline started coming up. I knew  
5 who he was.

6 Q Prior to these disciplinary issues  
7 starting how would you describe him as an employee?

8 A My interactions were limited to five or  
9 ten minutes on a train here or there. So it was  
10 more like hey, how's it going. Typical small talk.  
11 Oh, this train is busy, it's not busy. I don't  
12 recall anything positive or really negative. See  
13 you later, have a good day, stuff like that.

14 Q Fair to say he didn't really stick out on  
15 either extreme?

16 A Yes. There is about a thousand conductors  
17 and just I knew who he was.

18 Q Thinking back over the disciplinary issues  
19 that you dealt with Mr. Rosati on, how would you  
20 characterize him now?

21 A I haven't -- the last time I saw him was  
22 at that one -- we did the statement of the facts.  
23 How would I characterize him? I don't know.  
24 Regular guy, I don't know how to answer that  
25 question.



ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

15

1 B. Gallup

2 Q Okay, okay, that's a fair enough answer.

3 I have some documents I'm going to  
4 show you, I will go ahead and preview for you. Like  
5 I said, your name came up on a lot of these  
6 documents. I've got more than I've had with other  
7 witnesses. However, I will tell you a lot of these  
8 documents I'm trying to figure out what they are.

9 A Okay.

10 Q Helpfully, we will get through them fairly  
11 quickly.

12 A Okay.

13 Q Let me open up the first one here.

14 (Gallup Exhibit A, Marked for Identification.)

15 I'm going to share my screen. Are  
16 you able to read that okay?

17 A Yes.

18 Q I will give you a second to read it. Let  
19 me know when you're done.

20 A Okay.

21 Q Do you recognize that document?

22 A Yes, I do.

23 Q What do you recognize it as?

24 A After myself and Mike Bendick met with  
25 Steven Rosati, Mike Bendick instructed me to write

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

16

1 B. Gallup

2 an email to myself just a quick summary of something  
3 that occurred a few weeks earlier.

4 Q Do you see in this email it refers to  
5 TikTok and social media posts?

6 A I see that.

7 Q Do you recall that?

8 A I don't recall the actual details of the  
9 actual post. I remember sitting in a conference  
10 room discussing with Mr. Rosati some posts he made.

11 Q Do you recall what the issue with the  
12 posts was?

13 A It involved him being in uniform in a few  
14 different locations that were identifiable as  
15 Railroad property. I don't remember the details of  
16 what he was actually saying. It was clear he was in  
17 Railroad uniform on Railroad property and possibly  
18 at that point on an actual train that was in motion.

19 Q Do you recall if he was talking about the  
20 Railroad or about other things?

21 A There were few of them. I don't remember  
22 at this particular meeting because further down the  
23 road there were other posts. I don't recall at this  
24 meeting what the actual details of the post were.

25 Q At the end it says that he was receptive

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

17

1 B. Gallup

2 to the conversation?

3 A Correct.

4 Q Can you tell me what you mean by that?

5 A Mr. Bendick a few times stated that,  
6 listen, you can't be in uniform or on company  
7 property making these. It's a violation of a few  
8 rules. There is a rule about using a cellphone on a  
9 train and Mr. Rosati at that point said I won't make  
10 anymore and I will take down the ones that I  
11 previously uploaded.

12 Q Do you know whether or not he actually did  
13 that?

14 A I don't recall after this meeting if it  
15 was done or not, no.

16 Q Do you recall whether you would have  
17 checked in to whether or not he complied with those  
18 instructions?

19 A I don't have TikTok. I don't recall what  
20 happened after this meeting if I checked in or if  
21 anybody instructed me to check in. I don't know.

22 Q Would you normally have checked in on an  
23 employee's social media post in a situation like  
24 this?

25 A No.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

18

1 B. Gallup

2 MR. SHEA: Objection.

3 A Not randomly, no, unless somebody asked me  
4 to.

5 Q Is it fair then to say that as part of  
6 your job unless you're asked to, you don't routinely  
7 follow employees' social media posts?

8 A That would be correct.

9 Q I'm going to share with you what I have  
10 marked as Gallup Exhibit B.

11 (Gallup Exhibit B, Marked for Identification.)

12 Can you see that okay?

13 A Yes, I can.

14 Q This is a preview. I will tell you  
15 several of the exhibits I'm going to share with you  
16 appear to be email strings. When that's the case, I  
17 will start at the bottom and go up so we can try to  
18 get them in chronological order. If, at any time,  
19 you need to have me scroll through the whole thing  
20 so can you read it first let me know.

21 A Okay.

22 Q I will ask you first to read this and let  
23 me know if you recognize it.

24 (Witness perusing document.)

25 A I read it. I don't recall it or recognize

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

19

1 B. Gallup

2 it. I know the people in the email thread.

3 Q Let me scroll up. Read the first of it if  
4 you would if you recognize it.

5 A Sure.

6 (Witness perusing document.)

7 I don't recognize it or recall it. I  
8 know the names involved.

9 Q You don't recall what it was referring to?

10 A I don't recall what it refers to. I know  
11 what some of the terms are. I don't recall this  
12 specific incident.

13 Q Easy enough. I'm sharing with you what  
14 I'm going to call Gallup Exhibit C.

15 (Gallup Exhibit C, Marked for Identification.)

16 Let me scroll up a little bit more.  
17 Can you see that okay?

18 A Yes, I can.

19 Q If you would go ahead and read it.

20 Let me know if you recognize it.

21 (Witness perusing document.)

22 A I see the names involved. I don't  
23 remember what it was in reference to though.

24 Q Let me ask you this: It appears there is  
25 an attachment referring to Rosati and an Antifa

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

20

1 B. Gallup

2 shirt of some sort. Do you see that?

3 A Yes. I'm looking at the name of the  
4 actual subject. I know at one point somehow it came  
5 to the department's attention that he was selling  
6 some sort of shirts online. I believe it had  
7 something to do with that. I don't remember what  
8 the attachment or link was though.

9 Q So let me ask first, you mentioned that it  
10 came to the department's attention. Do you have any  
11 knowledge on how it came to the department's  
12 attention?

13 A That I don't recall. I remember someone,  
14 because I don't remember who, someone mentioned it.  
15 The people involved in the thread, Michael Bendick,  
16 Erin Sherrard and myself were told to look into it  
17 or something to that nature.

18 Q Okay. Do you recall was there a specific  
19 issue related to him -- I'm sorry to Rosati and  
20 Antifa?

21 A I don't recall why -- how this shirt came  
22 to our attention. We have a dual employment policy  
23 and he was selling shirts online of a political  
24 nature. I believe that's why. I don't recall who  
25 the genesis of this.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

21

1 B. Gallup

2 Q Okay, great, thank you. We will come back  
3 to the dual employment policy later. I have a  
4 different exhibit related to that.

5 I'm going to show you what I will  
6 call Gallup Exhibit D like dog.

7 (Gallup Exhibit D, Marked for Identification.)

8 Are you able to see that?

9 A Yes.

10 Q If you read through it let me know if you  
11 recognize it.

12 (Witness perusing document.)

13 A Okay. Yes, I recognize what this is  
14 about.

15 Q What do you recognize it to be about?

16 A In one of the social media posts or videos  
17 that Mr. Rosati had, he made the reference to fuck  
18 around find out. Somehow someone asked what that  
19 meant and then I remember reading something in an  
20 article very recently around that time about that  
21 phrase. I had sent an Apple News article to  
22 Ms. Sherrard and Mr. Bendick.

23 Q Okay. At this point would you say that  
24 you were doing any sort of investigation of  
25 Mr. Rosati?

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

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1 B. Gallup

2 A I was not, no. Someone asked about the  
3 video again, but I was not actively investigating at  
4 this point, no.

5 Q This mention the Proud Boys. Do you  
6 recall if that group was ever an issue in any of  
7 Mr. Rosati's disciplinary proceedings?

8 A I'm not sure what you're asking.

9 Q Let me rephrase that.

10 Do you recall in your conversations  
11 with Mr. Bendick or anyone else for that matter  
12 regarding Mr. Rosati whether the Proud Boys came up  
13 as an issue with relation to Mr. Rosati?

14 A From my recollection the only time it was  
15 was when he had that phrase on his videos and timing  
16 wise I had been using the Apple News app on my phone  
17 and an article popped up and that phrase was in  
18 there.

19 Q Thank you. Before I bring up another  
20 exhibit let me ask you in relation to the present  
21 case regarding Mr. Rosati, did you do a search of  
22 your email?

23 A Yes. A while back I was told to put all  
24 emails key word Rosati, anything Rosati in a folder,  
25 yes.



ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

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B. Gallup

Q That's a search that you would have done  
yourself?

A Yes.

Q I'm going to share with you -- we will  
call this Gallup Exhibit E.

(Gallup Exhibit E, Marked for Identification.)

I will represent to you as soon as  
you see this some of the emails that I received seem  
to be in the format of the last several exhibits,  
some are in this format. I'm not sure why. There  
may be sometimes I ask you if you recognize a  
document and you may not recognize the format, but  
you may recognize the content. So if that's the  
case if you would let me know I would appreciate  
that. I assume you can see this?

A Yes.

Q If will you take a second and read it over  
and let me know if you recognize it.

(Witness perusing document.)

A I read it. Once again I don't recognize  
or recall it offhand, but based on the people  
involved and some of the details I know what it's  
about but I don't recognize it offhand.

Q Tell me what you think you recognize it to

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

24

1 B. Gallup

2 be?

3 A Based on the fact it's Mr. Bendick and  
4 myself and Erin from the trial office and it says, I  
5 may do discipline on Wednesday and Thursday. At one  
6 point during Covid, Mr. Bendick and myself were  
7 spending a lot time in offices in Babylon because of  
8 social distancing and everything and when we do  
9 discipline, we bring individuals in to sign their  
10 discipline -- their trial waivers, Railroad trial  
11 waivers. The fact it says I may do discipline, I  
12 may bring in Rosati to sign I believe was him  
13 signing something and the fact it looks like there  
14 is two or one sort of social media policy. A lot of  
15 times when an individual signs discipline when it's  
16 related to Long Island Railroad or MTA policy in the  
17 course of signing discipline, we can also provide  
18 them with that policy as a reminder, as a reminder  
19 here is what you violated. Please reread this over  
20 again and make sure you're fully aware of it before  
21 we let you go. He was coming to sign something and  
22 we were giving him this paperwork.

23 Q Do you recall what he was going to sign  
24 that day?

25 A No, I do not.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

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1 B. Gallup

2 Q Can you tell me who Vinny is?

3 A There is two Vinnys it could be referring  
4 to at the Railroad. There are two that are higher  
5 up. One is Vincent Campossano. I don't remember  
6 his position at this time. He's currently the  
7 general superintendent of transportation. I don't  
8 remember his position at this time. There is also a  
9 Vinny Tessatore who is the head of the labor union  
10 who represents conductors and assistant conductors.  
11 Being that this is discipline, both of these Vinnys  
12 may have been involved in it. They are higher than  
13 Mr. Bendick and sometimes they work out discipline  
14 above us.

15 Q It could have been either one of those?

16 A It's hard to figure out. Vinny Tessatore  
17 represents conductors and assistant conductors and  
18 Vincent Campossano, being his position sometimes he  
19 gets involved with the discipline process and sort  
20 of tells Mr. Bendick or myself here is what's going  
21 on.

22 Q In the top email in the thread there the  
23 first sentence says, Since Rosati is scheduled to  
24 start the suspension on Monday.

25 Do you see that?

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

26

1 B. Gallup

2 A Yes, I do.

3 Q Do you know what that was referring to?

4 A That's part of discipline. We sometimes  
5 issue suspensions. The way it works at the Railroad  
6 it could be an actual suspension on the street and  
7 we also refer to it when you get docked pay, you're  
8 working at 75 percent or a working day suspension.  
9 I don't know offhand on the street or 75 percent. I  
10 don't know how long based on this.

11 Q Do you recall whether both of those sorts  
12 of suspensions were given to Mr. Rosati at different  
13 times or not?

14 A Offhand I do not.

15 Q I'm going to show you what I'm going to  
16 refer to as Gallup Exhibit F.

17 (Gallup Exhibit F, Marked for Identification.)

18 Are you able to see that?

19 A Yes, I am.

20 Q Go ahead and read it. If you would let me  
21 know when you want me to scroll down and I will ask  
22 you some questions.

23 A Scroll down.

24 Q Okay.

25 A Continue to scroll.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

27

1 B. Gallup

2 Q If it's okay with you, I will scroll down  
3 to where it says Mr. Rosati.

4 A Okay. I read Mr. Rosati's stuff.

5 Q First I will ask you if you recognize  
6 this?

7 A I don't recognize this, but once again  
8 based on the names involved and looking at it, I  
9 know what it is but I don't recognize this  
10 particular time.

11 Q The main thing I'm wanting to do with this  
12 document is have you help me interpret it. Would  
13 you able to do that?

14 A I'm trying.

15 Q Starting with the first line where it says  
16 Rosati, can you go through that line and tell me  
17 what the different things mean?

18 A The first is his last name, first initial.  
19 Then it says what we call IBM, his employee number.  
20 Then it's a brief description of -- on the railroad  
21 we call what we call a SAFER system, S-A-F-E-R.  
22 It's how we document good or bad observations. This  
23 is a quick summary of whatever SAFER rule. This  
24 document is all noncompliance so it's what he  
25 violated. The first line is he violated Safety Rule

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

28

1 B. Gallup

2 900.3.2 and Rule 801 and then it goes over -- that's  
3 the date that it was entered. It goes all the way  
4 to the right, that's the trial number.

5 Q Let me repeat so I understand. The date  
6 that's shown there is the date that it was entered,  
7 not necessarily the date of the incident?

8 A Yes, I believe so.

9 Q And then the last column, that 032-21,  
10 would that be the same as on a notice of trial there  
11 is a trial number on there?

12 A That's correct.

13 Q Thank you. I'm going to show you what I'm  
14 calling Gallup Exhibit G.

15 (Gallup Exhibit G, Marked for Identification.)

16 Can you see this okay?

17 A Yes.

18 Q If you would go ahead and read and let me  
19 know if you recognize it.

20 (Witness perusing document.)

21 A Once again I don't recognize it or  
22 remember it, but I can figure out based on the  
23 people involved in and some of the terms what it  
24 refers to.

25 Q Great. One of the things I want to ask

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

29

1 B. Gallup

2 you about is some of the terms. Can you tell me  
3 what a GN is?

4 A We have a book of rules we refer to as the  
5 book of rules, there is also a timetable. All  
6 different rules and regulations on how conductors,  
7 engineers, other employees of the railroads have to  
8 do their jobs. So what a GN is it refers to a  
9 general notice and it's a paper revision. It's an  
10 update to one of those documents. GN 6-35 means  
11 that time table number six and then there is GN 6-1  
12 changes some things. GN 6-2 changed some things.  
13 There is the 35th GN came out and must have had some  
14 change to Rule 801. We get these things and we put  
15 in this big book of rules. She was asking me to  
16 forward this GN because there was a change to the  
17 rule she needed.

18 Q Thank you. So this big book of rules that  
19 you refer to, is that something that each conductor  
20 would have a copy of?

21 A In order to pass your assistant conductor  
22 test, you have to be qualified as an assistant  
23 conductor on the book of rules. You're given this  
24 big book, the train department goes over this book.  
25 It's big, it's hundreds of pages. They go over it

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

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B. Gallup

and then once you pass the test, you're out in the field as an assistant conductor. It's one of your job responsibilities to keep your book of rules and timetable updated so when a new GN comes out for your job, you're given time to check our bulletin board and the GNs at the bulletin board, you take it, you read it, you insert it in the book. Mr. Rosati would have been required to have this GN in his book and read and understood and signed off on it that okay, I understand whatever GN 6-35 change and update is to Rule 801.

Q Would he be expected to have that book with him whenever he was working or how does that work?

A You're required to carry that book of rules and the timetable with you at all times on property while you're working.

Q Thank you.

A You're welcome.

Q I'm going to put up what I'm going to call Gallup Exhibit G1.

(Gallup Exhibit G1, Marked for Identification.)

MR. UHRICH: By counsel, this is a question I have for you. So during this



ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

31

1 B. Gallup

2 morning's deposition we talked about things  
3 that look like they were exhibits that were  
4 missing and you asked me to put it in writing.  
5 Probably about half the exhibits I have for  
6 Mr. Gallup are things where it looks like the  
7 attachments aren't there. The copies I have  
8 don't have Bates numbers. So it occurred to me  
9 there is a couple of ways I could do this. I  
10 could send them to you as attachments in an  
11 email or I could put them in as exhibits today  
12 and refer to when I write to you by exhibit  
13 numbers. Do you have a preference?

14 MR. SHEA: We don't have a preference. We  
15 should say we produced these documents in  
16 native. It looks like these were converted to  
17 pdf internally by your office. I did check the  
18 link in between these two depositions and what  
19 we sent you were the actual Outlook MSG files.  
20 This is not how we sent them.

21 MR. UHRICH: This would be a processing  
22 issue on our end?

23 MR. SHEA: I believe so.

24 MS. PASRICHA: This is Priya. For the  
25 record, the attachments should be attached to

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

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B. Gallup

the native as well. Let us know if you don't have them but they should be there.

MR. UHRICH: We will. What I will do then all the ones that are here for that purpose I won't bother putting in. I will have someone check that link that you sent and if there is any missing I will let you know.

MR. SHEA: Thank you.

MR. UHRICH: I'm going to put up what I'm going to refer to as Gallup Exhibit H.

(Gallup Exhibit H, Marked for Identification.)

BY MR. UHRICH:

Q Are you able to see that?

A Yes, I can.

Q This is one of those email strings again. I will start at the bottom and ask you to read it. As you need me to scroll up let me know.

A Okay.

(Witness perusing document.)

You can scroll up.

Q Okay.

A You can scroll up.

You can scroll up.

I read it.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

33

1 B. Gallup

2 Q First I will ask you if you recognize  
3 this?

4 A No, I do not recognize this one.

5 Q Do you recall ever being involved in an  
6 issue with Mr. Rosati not wearing a face mask?

7 A I don't recall being involved with it. I  
8 do know whenever someone is put in for a  
9 noncompliance in our SAFER system, I got an email  
10 generated by that noncompliance so I remember seeing  
11 it. In fact that was at the bottom of this email  
12 thread, I remember seeing that. I wasn't involved  
13 in any discussions between the individuals in these  
14 emails here.

15 Q Okay. So am I understanding correctly  
16 then that that block at the bottom that has a bunch  
17 of emails, that's basically automatically generated  
18 by the system?

19 A That's correct.

20 Q Do you recognize enough of the terminology  
21 that I could ask to you explain some terms for me?

22 A I will do my best.

23 Q Great. About in the middle of the page  
24 here are you able to see my curser?

25 A Yes.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

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B. Gallup

Q Right where my curser is here the document says, I spoke with the TM on the phone.

Do you know what a TM is?

A Yes. We refer to our transportation managers, we refer to them as TMs, shorthand.

Q What exactly is a transportation manager?

A So similar -- how there is different superintendents and different lead managers there is different transportation managers. The progression is transportation manager, above that is lead, above that is superintendent. So there is transportation managers that work in my area that go out and ride trains and observe employees. There is transportation managers that just work in the terminals like Penn Station, Jamaica, dealing more with the operations, but they also ride trains as part of their going to and from work or part of their job duties as well. It's a general term for different specialties.

Q The paragraph above it it says, This is the employee who served 30CDS for using sick time.

Do you know what 30CDS would mean?

A No. I don't know what that is referring to.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

35

1 B. Gallup

2 Q And then in this area right here it says,  
3 He also asked if we can send Rosati a direct order.

4 Do you know what they referred to  
5 when they are saying a direct order?

6 A Yes. They are times where a manager or a  
7 representative from the transportation department  
8 has to give an employee a direct order to do  
9 something. Sometimes it's out in the field where we  
10 have to have them operating a train and if they  
11 don't want to, we have to give them a direct order.  
12 For those times we have to put it in writing we have  
13 to give an employee a direct order to comply with  
14 some sort of rule.

15 Q Okay, understood. Thank you.

16 I'm going to show you what I'm going  
17 to refer to as Gallup Exhibit I.

18 (Gallup Exhibit I, Marked for Identification.)

19 Are you able to see that?

20 A Yes, I am.

21 Q If you would please read that over and let  
22 me know if you recognize it.

23 (Witness perusing document.)

24 A Once again I don't recognize or recall it.  
25 Based on the names and the terminology, I know what

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

36

1 B. Gallup

2 it's in reference to.

3 Q What do you understand it to be in  
4 reference to?

5 A At some point it came to our attention  
6 that Mr. Rosati was operating a web page or website  
7 that was selling t-shirts. To be employed at the  
8 Railroad, you are allowed to have outside  
9 employment, but there is forms you have to fill out  
10 because there is certain regulations as to what type  
11 of employment it can be. When this website was  
12 discovered, it was discovered that Mr. Rosati had  
13 not filled out the duel employment paperwork to get  
14 the approval from HR.

15 Q Let me ask you first of all are you aware  
16 of any sort of, I will call it a threshold, that it  
17 would take to qualify as duel employment?

18 A No. We have a lot of rules and  
19 regulations as far as hours of service, but besides  
20 that I don't know. We are not really too involved  
21 in the duel employment process.

22 Q Would a duel employment charge normally be  
23 something that would come through your office?

24 A In my position now since I'm  
25 superintendent of train service I would be involved.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

37

1 B. Gallup

2 At that point as the lead of fare collection, I  
3 don't know if it would have come to -- I guess how  
4 it was discovered. The best way I can say is I  
5 don't know.

6 Q Fair enough. Do you know -- would say  
7 having stuff that you were selling on Ebay, would  
8 that count as dual employment?

9 MR. SHEA: Objection.

10 A I don't believe so. I'm not really  
11 involved too much in the dual employment process.  
12 When you fill out the application, I don't know who  
13 approves it or anything like that or doesn't approve  
14 it.

15 Q Based on your previous responses am I  
16 correct in understanding that the issue here was his  
17 failure to fill out a form prior to starting  
18 whatever he was selling?

19 MR. SHEA: Objection.

20 A I believe so. I don't remember how it was  
21 brought up or how it was discovered, but I believe  
22 that was...

23 Q Do you recall any discussions related to  
24 the content of what he was selling?

25 A I know it was t-shirts, but I don't

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

38

1 B. Gallup

2 remember ever discussing with anybody the actual  
3 content. Someone had a picture of a shirt he was  
4 selling. He has a website, here is a picture of a  
5 shirt. I don't recall anything further.

6 Q Do you recall earlier we looked at a  
7 couple of emails that referred either to Antifa or  
8 to -- I think it was fuck around and find out was  
9 the phrase?

10 A Yes.

11 Q Do you recall those emails?

12 A Yes.

13 Q Do you know if those two were part of this  
14 duel employment discussion?

15 A I believe one of the shirts, the fuck  
16 Antifa shirt was a shirt someone saw that was on  
17 sale on his website and that's one of the shirts  
18 that either was somehow linked to his website or he  
19 was wearing it or promoting it. I think that's how  
20 the existence of the website came to.

21 Q Do you recall we also talked at an earlier  
22 exhibit about a meeting that you and Mr. Bendick had  
23 with Mr. Rosati regarding some social media posts  
24 that he was making while on Railroad property or in  
25 uniform?



ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

39

1 B. Gallup

2 A Yes.

3 Q Do you recall if those discussions had  
4 anything to do with this duel employment situation?

5 A I don't recall what posts at that point we  
6 were referring to or what TikToks or whatever they  
7 were.

8 Q I'm going to show you what I'm going to  
9 call Gallup Exhibit J.

10 (Gallup Exhibit J, Marked for Identification.)

11 Are you able to see that now?

12 A Yes, I am.

13 Q If you would review that and let me know  
14 if you recognize it.

15 (Witness perusing document.)

16 A Once again I don't recognize it. I  
17 recognize some of the people in the emails.

18 Q Do you recall why you would have sent this  
19 email?

20 A I'm trying to go back and read who it went  
21 to.

22 Q Sure. Take your time.

23 A Offhand, no. I don't know why it was sent  
24 or what...

25 Q Okay. In the first line here it refers to

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

40

1 B. Gallup

2 Gassert?

3 A Correct.

4 Q Do you know what that is referring to?

5 A I believe it's referencing an assistant  
6 conductor whose last name was Gassert. That was in  
7 some of the videos and posts along with Mr. Rosati.

8 Q Okay. Then at the end of that line you  
9 typed the word interesting; do you see that?

10 A Yes.

11 Q Do you recall why you said interesting?

12 A I think because it was -- he was in -- he  
13 was actually on a platform as well. I don't recall  
14 uniform or not. Based on the reference it was  
15 interesting he was making a video or in a video in  
16 Jamaica.

17 Q Okay. I'm going to show you Gallup  
18 Exhibit K.

19 (Gallup Exhibit K, Marked for Identification.)

20 Are you able to see that?

21 A Yes, I am.

22 Q Go ahead and read that over and let me  
23 know if you recognize it please.

24 (Witness perusing document.)

25 A Okay, I read it.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

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B. Gallup

Q Do you recognize this?

A Once again I don't recognize it offhand, but based on the terminology and the names involved, I can figure out what it's in reference to.

Q What do you believe it to be in reference to?

A At some point one of the videos on one of the social media platforms Mr. Rosati was in uniform and somehow it was believed he was actually not only in uniform, but he was working his job. He was actually on duty, not on a break or anything. The video actually was like a selfie type where you could see a sign behind him on the platform and we determined that the video shows the time 10:04, you can see the time on the station platform. It goes further, it says he was on Job 651. That's one of our job assignments and when you look at that job, he was supposed to be at Hicksville in between trains at that time so we figured out he was on duty in uniform working on that video.

Q Do you recall what the video was about?

A That I do not recall, no.

Q You mentioned that it appeared to be a selfie-type video, correct?

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

42

1 B. Gallup

2 A Yes. It was -- he was holding the phone  
3 in his hand and it was clearly his face. You could  
4 see the stripes of our uniform. I believe you got  
5 yourself a logo and you could see the platform  
6 behind him where it says Hicksville and the time and  
7 the next train coming.

8 Q Do you recall were there any issues with  
9 the content of the video or was it simply the fact  
10 he was on duty?

11 A I don't recall what the content was at  
12 this point. I don't recall how we were made aware  
13 of the video, just that he was on duty, on his  
14 cellphone making a video.

15 Q Okay. Up at the top here I guess it's  
16 Ms. Kustoff says, Plus the one on the train.

17 MR. SHEA: Objection.

18 Q Do you know what that refers to?

19 A No, I do not.

20 MR. UHRICH: At this point we have been  
21 going for about an hour. Why don't we take a  
22 short break if we could.

23 (Whereupon, a short recess was taken.)

24 BY MR. UHRICH:

25 Q I'm going to go ahead and show you what

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

43

1 B. Gallup

2 I'm calling Gallup Exhibit L. Are you able to see  
3 that okay?

4 (Gallup Exhibit L, Marked for Identification.)

5 A Yes.

6 Q If you would please read that and let me  
7 know if you recognize it.

8 (Witness perusing document.)

9 A Yes.

10 Q Do you see recognize this email or this  
11 document?

12 A No, I do not.

13 MR. SHEA: Craig, I want to note it looks  
14 like there isn't a date on this document.

15 MR. UHRICH: That's correct. The ones  
16 that are in this format none of them have  
17 dates. I will have to go back and check on  
18 that again.

19 BY MR. UHRICH:

20 Q Let me ask by the context do you recall  
21 any sort of conversation of this nature?

22 A No. I recognize the names, but I don't  
23 know what this is in reference to.

24 Q Do you know who Tim Haig is?

25 A Yes, I do.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

44

1 B. Gallup

2 Q Who is he?

3 A At this time just judging by my title, the  
4 transportation manager, at that time he would have  
5 been the general superintendent who was above me and  
6 was above Michael Bendick at that time.

7 Q Okay. I see in the second sentence it  
8 says, I explained that the decision was way above  
9 Mr. Bendick, myself and you.

10 A Yes, I see that.

11 Q Do you recall what that was referring to?

12 A No, I don't recall why Tim Haig was asking  
13 Erin -- I don't remember what he was asking and why  
14 I was asking Erin this.

15 Q I'm going to show you what I'm calling  
16 Gallup Exhibit M like Mary.

17 (Gallup Exhibit M, Marked for Identification.)

18 Are you able to see that okay?

19 A Yes.

20 Q If you would read it for me and let me  
21 know when you need me to scroll down?

22 A Okay, scroll down.

23 Q Okay.

24 A I'm done.

25 Q My first question is: Do you recognize

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

45

1 B. Gallup

2 this document?

3 A I do not recognize this particular  
4 document, no.

5 Q Did you in fact notify, I guess,  
6 Mr. Rosati on January 21st of 2021, that he was  
7 taken out of service?

8 A Yes, I did.

9 Q Was that an in-person meeting?

10 A Correct.

11 Q Do you recall what that was for?

12 A It was a statement of facts we were doing  
13 with the employee. I don't recall the exact reason  
14 or what was being asked of him, but at the  
15 conclusion of this statement of facts, we took him  
16 out of service so I do remember that being in  
17 person.

18 Q Could you explain to me what you mean when  
19 you say a statement of facts?

20 A At the Railroad there is times where we  
21 conduct -- it's not a trial, it's an exploratory  
22 interview with the employees regarding various  
23 operational incidents, rules, violations. I recall  
24 it being a statement of facts with Mr. Rosati on  
25 this day. I don't remember the exact details of

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

46

1 B. Gallup

2 what we were asking him, but at the conclusion we  
3 did take him out of service.

4 Q Would I be correct in understanding then  
5 that when you're referring to a statement of facts,  
6 you're referring to you trying to get facts from  
7 him, not the other way around?

8 A That is correct.

9 Q Okay. Is that part of a formal  
10 investigation?

11 A They are held for various reasons.  
12 Sometimes it's just a result of an operational  
13 incident. Like right now we are dealing with  
14 derailment and there is going to be a statement of  
15 facts tomorrow for the crew involved in the  
16 derailment to find out where they were when things  
17 happened, who else was around. Other times it's  
18 between two employees we do a statement of facts  
19 when there is personal issues between them. There  
20 is various reasons why we hold these statement of  
21 facts.

22 Q Okay. Are those statement of facts, are  
23 they generally recorded?

24 A There is the trial officer for the  
25 Railroad or there is trial officers there. There is



ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

47

1 B. Gallup

2 some sort of recording device present there that's  
3 then transcribed.

4 Q Do you recall if this particular statement  
5 of facts with Mr. Rosati was recorded and  
6 transcribed?

7 A I believe so.

8 Q It says that it's an investigation into  
9 conduct unbecoming an employee of the Long Island  
10 Railroad.

11 Do you recall what sort of conduct  
12 that would have been?

13 A I don't recall what the actual statements  
14 or the questions were offhand, no.

15 Q Do you have an understanding -- we  
16 talked -- let me withdrawn that question and start  
17 again.

18 We talked earlier today about some  
19 other incidents with Mr. Rosati not wearing a face  
20 mask, dual employment, not being on the train when  
21 he was supposed to.

22 Do you have an understanding on if  
23 there is any sort of hierarchy between any of those  
24 charges and conduct unbecoming an employee?

25 MR. SHEA: Objection.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

48

1 B. Gallup

2 A I don't recall what the exact conduct  
3 unbecoming, what the actual investigation was so I  
4 don't recall if it was related to any of those other  
5 incidents or not offhand.

6 Q Okay. Do you recall when he was taken out  
7 of service this day, do you recall whether that was  
8 with or without pay?

9 A I don't recall, but when we use the term  
10 out of service it's without pay.

11 Q Is there a different term that you would  
12 use for with pay?

13 A We normally use the term relieved with  
14 pay. It's a code in our payroll system or crew  
15 management system.

16 Q Okay, thank you. I'm looking at something  
17 here. I'm going to show what I'm marking as Gallup  
18 Exhibit N.

19 (Gallup Exhibit N, Marked for Identification.)

20 Are you able to see that?

21 A Yes, I am.

22 Q I will scroll to the top and ask you to  
23 read through it and let me know when I need scroll  
24 down.

25 (Witness perusing document.)

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

49

1 B. Gallup

2 A Scroll down.

3 Q Okay. So you were not one of the authors  
4 on this email, but it seems to refer to you and Mike  
5 asking for a script if you need to take Rosati OOS,  
6 which I assume is out of service. Do you recall  
7 that conversation?

8 A I don't recall the conversation, but I  
9 recall being given this document.

10 Q Would you normally be given a script when  
11 you take someone out of service?

12 A I have done it before and this script -- I  
13 have never had to give somebody a direct order  
14 though.

15 Q Okay. In this line it says, Asking for a  
16 script if they need to take Rosati out of service.  
17 Do you see that?

18 A Yes, I do.

19 Q Do you recall when you went into that  
20 meeting on January 21st, was there a question on  
21 whether or not you would be taking Rosati out of  
22 service?

23 A When we went into this statement there was  
24 no real direction given. At one point it was told  
25 to me that I might have to give him a direct order.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

50

1 B. Gallup

2 If he refused to answer the direct order, I would  
3 have to take him out of service.

4 Q Do you recall what that direct order was  
5 for?

6 A Just if he refused to answer any questions  
7 in the statement of facts.

8 Q I see, okay. Do you recall if he refused  
9 to answer any questions?

10 A I don't recall if I had to give him a  
11 direct order. No, I don't.

12 Q Do you recall how the decision was made  
13 that he needed to be taken out of service?

14 A I don't recall how it was made or who  
15 informed me of it. At some point I was told you're  
16 taking him out of service.

17 Q Do you recall who told you that?

18 A I don't recall, no.

19 Q Was anyone in the room besides you and  
20 Mr. Rosati?

21 A I believe someone from the union was in  
22 the room. Next to the trial office there is a room  
23 where the union representatives sit in when there is  
24 a statement of facts between little breaks. I don't  
25 remember who, but I believe there were one or more

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

51

1 B. Gallup

2 union officials in there, but I can't recall  
3 offhand.

4 Q Where it says Mike and Ben were asking, do  
5 you know who Mike is?

6 A I don't know offhand.

7 Q I'm going to change topics a little bit on  
8 you here. I'm going to show you what I'm calling  
9 Gallup Exhibit O. Let's start at the bottom and  
10 scroll up.

11 (Gallup Exhibit O, Marked for Identification.)

12 A Can you scroll?

13 Q Okay.

14 A Okay.

15 Q Do you recall this email exchange?

16 A I don't recall offhand, no.

17 Q Do you recall a flash drive related to  
18 Mr. Rosati?

19 A Yes, I do.

20 Q What do you recall about that?

21 A At one point I was told to put some of the  
22 emails I had and some photos or screen shots onto a  
23 flash drive and provide it to Ms. Sherrard in the  
24 trial office.

25 Q Do you recall was this prior to him being

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

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B. Gallup

taken out of service?

A I don't recall if it was prior or after,  
no.

Q Okay. Do you know where that flash drive  
is now?

A No, I do not.

Q Where did you deliver it to?

A I delivered it to the trial office,  
Ms. Sherrard. I don't know if I gave it to her  
specifically, but the trial office.

Q Since they are somewhat related, I'm going  
to mark this as Gallup Exhibit 01.  
(OOS Script-Insubordination email Exhibit 01, Marked  
for Identification.)

If you would go ahead and read that.

(Witness perusing document.)

A Okay, I read it.

Q Do you recognize this?

A Yes, I do.

Q What do you recognize it as being?

A At one point I was -- when I was putting  
the documents onto the thumb drive, it was on my  
phone and messages were popping up on my phone like  
notifications and I realized they were in the screen

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

53

1 B. Gallup

2 shots so I said hold on, I had to re-save some of  
3 the documents with the no notification on it.

4 Q This thumb drive that you're referring to,  
5 would that be the same as the flash drive in the  
6 previous exhibit?

7 A Yes.

8 Q I wanted to make sure.

9 Do you recall when the last time that  
10 the thumb drive or flash drive would have been in  
11 your possession is?

12 A Offhand, no, I do not.

13 Q I'm going to show you Gallup Exhibit 02.  
14 (Gallup Exhibit 02, Marked for Identification.)

15 Are you able to see that?

16 A Yes, I am.

17 Q If you read that and let me know if you  
18 recognize it?

19 A Yes, I recognize this.

20 Q What do you recognize it to be?

21 A There was a problem with the thumb drive.  
22 The way the Railroad computers work there is weird  
23 passwords so someone, I forget who, set up some sort  
24 of a shared drive on the computers that I put on  
25 when I was trying to get the thumb drive to work.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

54

1 B. Gallup

2 Q Same thing as before?

3 A Yes.

4 Q Do you know if this SharePoint location  
5 still exists?

6 A That I don't know.

7 Q I asked you earlier about searching your  
8 emails; do you recall that?

9 A Yes, I do.

10 Q When you searched your emails, did you  
11 search on this SharePoint location as well?

12 A I would have to look at -- no, I don't  
13 know. I don't know how to get to that anymore.

14 Q Do you recall would there be any documents  
15 that you think might be on that SharePoint that  
16 would not have been in your email?

17 A I don't believe so.

18 Q I'm showing you what I will mark as Gallup  
19 Exhibit P like Paul.

20 (Gallup Exhibit P, Marked for Identification.)

21 I will let you read that.

22 A Yes, I recognize it.

23 Q What do you recognize it to be?

24 A We were having a problem with that same  
25 thumb drive and it was password protected and at one



ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

55

1 B. Gallup

2 point we couldn't get the password to work so I had  
3 to reset the password. That was me letting Erin  
4 know what the new password was.

5 Q At the beginning when it says, I had to  
6 encrypt the USB.

7 A The way all our computers work is because  
8 there is safety sensitive information everything is  
9 encrypted, it's protected. So in order to get into  
10 it, I had to make a password.

11 Q Normally when there is a disciplinary  
12 issue and it goes to the trial people, do you  
13 normally have to make them a thumb drive?

14 A Normally it's a noncompliance where a  
15 manager observed it or it's an operation incident  
16 where there is physical evidence right there. I've  
17 never had to do anything like this before.

18 Q Thank you. Just so I can keep them in  
19 order I'm going to show you another few exhibits  
20 fairly quickly. This is Exhibit Gallup Q.

21 (Gallup Exhibit Q, Marked for Identification.)

22 If you would read that and let me  
23 know if you recognize it.

24 A No, I don't recognize it.

25 Q Do you know would there have been another

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

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B. Gallup

flash drive at some point that you're aware of?

A All I recall is that one flash drive.

Q I'm showing you what I've marked as Gallup Exhibit R.

(Gallup Exhibit R, Marked for Identification.)

I'm going to go to the bottom so you can read in order.

A Scroll up a little bit.

Scroll up.

Scroll up.

Okay.

Q Do you recognize this conversation?

A I recognize the beginning of it. The rest of it I wasn't involved in it.

Q Let's go back to the beginning of it. This one at the very bottom, is that the one that you recognize?

A That's correct.

Q What do you recognize that to be?

A Someone said Mr. Rosati's Instagram is back up and that I let Michael Bendick know that I heard his Instagram was back up and running.

Q So the previous exhibits where you did the statement of facts and he was taken out of service,

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

57

1 B. Gallup

2 they said that happened January 21st of 2021,  
3 correct?

4 A That's correct.

5 Q It looks like this email that you sent is  
6 a little over four months later, three months later?

7 A Yes, it appears to be.

8 Q Do you know why you would have checked  
9 into this three months after he was taken out of  
10 service?

11 A At that point I think he was -- either his  
12 trial was going on or we heard it was possibly going  
13 on. I don't remember the details exactly and it had  
14 gone, the web page had gone down. Someone said, I  
15 don't remember who, referenced that it was back up,  
16 the videos were back up so I was letting Mike know  
17 it's back up.

18 Q We are getting close. I'm showing you  
19 what I've marked as I believe Exhibit S.

20 (Gallup Exhibit S, Marked for Identification.)

21 If you would take a look and let me  
22 know if you recognize that?

23 A Yes, I do.

24 Q What do you recognize that as?

25 A Someone brought it to my attention that

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

58

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B. Gallup

there was a Reddit thread and Mr. Rosati was in the  
Reddit thread.

Q When you said someone brought it to your  
attention, do you have any recollection who that  
was?

A I don't. I don't remember who.

Q Do you recall whether it would have been  
an employee or a member of the public?

A I don't recall at this point, no.

Q Do you recall why you were interested in  
that Reddit thread?

A Like I said, I don't remember who it was,  
but someone said, Hey, did you see, Steve is on  
Reddit. Something to that effect.

Q Was there a time in when you were needing  
to basically keep tabs on his activities?

A It wasn't part of my job responsibility or  
job description. I wasn't tasked with it. Once in  
a while someone above me would say anything --  
anymore videos or did he take down the video or  
something like that. It wasn't like everyday or  
every week I would check up on him.

Q I didn't quite hear that, did you say it  
was or was not?

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

59

1 B. Gallup

2 A It wasn't, was not.

3 Q You said that -- if I understood correctly  
4 you said it came from various people above you. Do  
5 you recall who any of those people would have been?

6 A Sometimes it would be Mr. Bendick,  
7 sometimes it would be someone above him and it would  
8 be passed through him. Sometimes it would be the  
9 trial office. I couldn't tell you how it would  
10 filter down to me.

11 Q This would be what I'm calling Exhibit T.  
12 (Gallup Exhibit T, Marked for Identification.)

13 If you take a look at that and tell  
14 me if you recognize it.

15 (Witness perusing document.)

16 A Yes, I recognize this one.

17 Q What do you recognize it as?

18 A Right around this same time as the Reddit  
19 form, it was brought to my attention that there was  
20 a conductor or appeared to be a conductor at a rally  
21 and he was on News 12. I went on the website and I  
22 found it and it appeared to be Mr. Rosati.

23 Q Do you recall if he was in uniform?

24 A At this one I don't recall the details of  
25 what he was wearing or anything, no.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

60

1 B. Gallup

2 Q Do you recall why it would have mattered  
3 whatever was on the news, this rally?

4 A I believe at this particular video he was  
5 chasing someone across the street. He was combative  
6 with somebody and that's why when it was discovered  
7 he was an employee of the Railroad, it was brought  
8 to our attention. It wasn't that he was at the  
9 rally, it was his behavior at the rally.

10 Q Since you brought up his behavior at the  
11 rally let me ask you, I have seen some emails  
12 talking about his attitude or whether or not he was  
13 confrontational or those sorts of things.

14 When you had to meet with him, what  
15 was your opinion on his attitude?

16 MR. SHEA: Objection.

17 A The interactions with him were all pretty  
18 professional and pretty polite. The only time I  
19 recall him having an attitude or an issue was the  
20 time I had to take him out of service. He got  
21 combative and very angry.

22 Q Tell me what you mean by combative and  
23 very angry?

24 A From what I recall he got up, he pushed  
25 something, he cursed, he was yelling, screaming. I

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

61

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B. Gallup

don't recall the exact, are you f'ing kidding me,  
this is crazy. Hand motions, stuff like that. He  
jumped up out of his seat when I told him.

Q I assume you're referring to when you told  
him he was out of service?

A Correct.

Q Prior to you telling him he was out of  
service how was his attitude?

A In the statement of facts he wasn't  
combative, he was almost like nonchalant about his  
behaviors, like so not combative, but he was very  
specific and we had to ask him questions numerous  
times to get him to answer some questions. I don't  
know how to describe it any other way.

Q Could you give me an example?

A It's so long ago I don't remember. We  
kept having to rephrase questions for him because he  
was -- the way he was answering it wasn't -- I don't  
know how to explain it.

Q I understand. Let me ask it this way: Do  
you have an opinion on whether he was understanding  
the questions he was asked?

MR. SHEA: Objection.

A I don't know. That's why we had to reask

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

62

1 B. Gallup

2 a few questions. I don't recall what the details  
3 were.

4 Q Do you recall if he stated that he wasn't  
5 understanding?

6 A I know in part of the -- going to  
7 statement of facts, that trial officer reads a  
8 prewritten statement and says if you don't  
9 understand anything ask. I don't recall him asking  
10 for things to be rephrased. I don't recall. It  
11 could have been or not. I don't know.

12 Q From what you observed did you have the  
13 impression that he was being obstructionist?

14 A Once or twice it seemed like yes, he was  
15 trying -- I don't know if this is the right term to  
16 use, like playing games with the way the question  
17 was asked and the way he was using words trying to  
18 avoid answering the question.

19 Q You don't recall what any of those  
20 questions were?

21 A Offhand, I don't know.

22 Q Okay. I'm going to show you what I'm  
23 calling Gallup Exhibit Q. If you take a look at  
24 that and let me know if you recognize it?

25 (Witness perusing document.)



ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

63

1 B. Gallup

2 A Are you able to scroll down.

3 Q There is nothing below.

4 A Offhand, no. I don't recall what this  
5 was.

6 Q It looks like this was about ten days  
7 after he was taken out of service by you. Do you  
8 recall it says it's an old Twitter account. Do you  
9 recall why you might have been looking for that?

10 A I don't have Twitter so offhand, no.

11 Q It says that you were sent the screen  
12 shot. Do you recall who would have sent it to you?

13 A I do recall now. A number I don't know  
14 sent me a screen shot of a Twitter, Tweet, Twitter  
15 post from Mr. Rosati or appeared to be Mr. Rosati.

16 Q You said it was a phone number you didn't  
17 recognize?

18 A Didn't recognize, no.

19 Q Thank you. I'm going to show you what I  
20 marked as Exhibit V and I will let you read through  
21 it.

22 (Gallup Exhibit V, Marked for Identification.)

23 A Scroll down.

24 Q Okay.

25 A Scroll down.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

64

1 B. Gallup

2 Q That was the end of it. Do you recall  
3 this conversation?

4 A I don't recall the conversation, no.

5 Q Do you recall anything going on with  
6 Mr. Rosati in relationship to a Covid clinic?

7 A Yes, I do.

8 Q What do you recall?

9 A At one point there was a video, a social  
10 media post. I don't remember the details of him at  
11 a Covid clinic, like a line at a Covid clinic with a  
12 bullhorn or yelling at people on line at a Covid  
13 clinic.

14 Q Do you recall if he was wearing a uniform  
15 or identified as a Railroad employee?

16 A I don't recall the details of what he was  
17 wearing at this point, no.

18 Q We talked earlier about a SharePoint that  
19 there were some Rosati videos on; do you recall  
20 that?

21 A Yes.

22 Q Do you recall if there was more than one  
23 of those?

24 A More than one SharePoint or more than one  
25 video?

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

65

1 B. Gallup

2 Q More than one SharePoint?

3 A Not that I recall, no.

4 Q Let me skip this exhibit then.

5 This I've marked as Gallup Exhibit W.

6 (Gallup Exhibit W, Marked for Identification.)

7 If you would take a look and let me  
8 know if you recognize this?

9 A I don't recognize it, no.

10 Q Do you recall ever seeing a website called  
11 Unfiltered Conservative?

12 A Yes, I do.

13 Q Do you recall what that was?

14 A It was -- someone brought to our attention  
15 that that was a website or user name that was used  
16 by Steve Rosati.

17 Q Do you recall -- you had talked earlier  
18 about a website where he was selling t-shirts, I  
19 believe?

20 A Yes.

21 Q Do you recall if that's the same or a  
22 different website?

23 A It was a different website. From my  
24 recollection, the Unfiltered Conservative had links  
25 or posts to the t-shirt website.

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

66

1 B. Gallup

2 Q Do you recall what these links that you  
3 would have attached would have been?

4 A Offhand, no. I don't know.

5 Q Okay. This will be Gallup Exhibit X.

6 (Gallup Exhibit X, Marked for Identification.)

7 I will scroll down a little bit. If  
8 you would read that and let me know if you recognize  
9 it.

10 (Witness perusing document.)

11 A It appears to be that same screen shot  
12 that I got from the earlier exhibit just being sent  
13 to other people now or different people.

14 Q Okay. Are you referring to the Unfiltered  
15 Conservative?

16 A No. The one from the Twitter account  
17 before he worked here.

18 Q The one from the unknown phone number?

19 A Yes, correct.

20 Q These are the same ones?

21 A I believe so, yes.

22 Q I'm going to show you Gallup Exhibit Y.  
23 Again there is not a lot on this. I will scroll  
24 down through it.

25 (Gallup Exhibit Y , Marked for Identification.)

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

67

1 B. Gallup

2 A Okay, can you scroll?

3 Q It's blank for a while. Do you recall  
4 being part of this conversation?

5 A No.

6 Q I believe that's the end of my exhibits.  
7 So just a couple of more general questions.

8 Do you recall -- when you met with  
9 Mr. Rosati and told him he was being taken out of  
10 service, do you have any knowledge of if he had  
11 previously been told that he was being suspended  
12 with pay?

13 A He was in talks with the union and I  
14 believe that at one point it was told to the union  
15 it looks like that's what we are going to do. I  
16 don't recall if he was ever told that specifically  
17 or not.

18 Q Do you recall who the union people would  
19 have been?

20 A Based on that time period it could have  
21 been E.J. Chino or Eugene Chino or Dominic  
22 Amandelori. I don't recall offhand. They are both  
23 the union people involved with the statement of  
24 facts at that point.

25 Q You don't happen to know how to spell Adam

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

68

1 B. Gallup

2 Amandelori, do you?

3 A No.

4 Q So when you told him that he was being  
5 taken out of service, did he mention anything about  
6 being surprised that it was without pay?

7 A I don't recall. Like I said, I know he  
8 jumped up and was very agitated. I don't know what  
9 he said or didn't say at that point.

10 Q Did you have any contact with Mr. Rosati  
11 after that time?

12 A Not that I can recall, no. I don't think  
13 so.

14 Q Without telling me about any conversations  
15 with your lawyers obviously, do you recall any  
16 conversations about Mr. Rosati after he was taken  
17 out of service?

18 A I just remember that once we finally heard  
19 that he was terminated, I remember someone saying  
20 did you hear they terminated Mr. Rosati. That's the  
21 only one I can really recall.

22 Q That particular conversation, did the  
23 person say anything beyond did you hear that they  
24 terminated him?

25 A I don't remember who told me it happened,

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

69

1 B. Gallup

2 no. I think we all thought it was going to be  
3 dragged out.

4 Q Is it fair to say that you have dealt with  
5 multiple disciplinary actions where someone was  
6 taken out of service?

7 A I have taken people out of service before,  
8 yes.

9 Q If you had to give me a ballpark, is that  
10 one or two? Is it five or ten? Is it a couple of  
11 hundred?

12 A Probably between five and ten.

13 Q In your experience in dealing with those  
14 sorts of disciplinary issues how would Mr. Rosati  
15 compare?

16 A As far as his reaction or as far as --

17 Q All the above.

18 A In the other cases they were all  
19 operational incidents or drug test failures so a  
20 little bit more subdued because they knew they  
21 either failed the drug test or they had a major  
22 incident where they knew it was coming so they were  
23 a little bit more subdued.

24 Q It wouldn't be an apples and apples  
25 comparison?

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

70

1 B. Gallup

2 A No. It was vastly different  
3 circumstances.

4 Q Fair enough. Have you had to discipline  
5 anyone else related to the dual employment policy?

6 A Not that I recall.

7 Q What about anyone else you had to  
8 discipline related to posting videos in their  
9 uniform or on railroad property?

10 A Nothing in uniform that I recall. Nothing  
11 on railroad property that I recall, no.

12 Q I believe that's all the questions I have  
13 for you.

14 MR. SHEA: We have no further questions.

15 THE REPORTER: Mr. Shea, will you be  
16 purchasing a copy of this transcript?

17 MR. SHEA: Yes.

18

19 (Time noted: 4:27 p.m.)

20

21 \_\_\_\_\_  
BENJAMIN GALLUP

22

23 Subscribed and sworn to before me this \_\_\_\_\_ day  
24 of \_\_\_\_\_ 2023.

25 \_\_\_\_\_, Notary Public.



ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

71

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B. Gallup  
I N D E X

WITNESS  
BENJAMIN GALLUP

EXAMINATION BY	PAGE
MR. UHRICH	4

# E X H I B I T S

GALLUP	DESCRIPTION	PAGE
Exhibit A	November 10, 2020 email	15
Exhibit B	December 2, 2020 email	18
Exhibit C	October 5, 2022 email	19
Exhibit D	April 9, 2021 email	21
Exhibit E	MTA Social Media Policy, June 18, 2020	23
Exhibit F	Trainmen Pending List	26
Exhibit G	Rule 801 from GN 6-35	28
Exhibit G1	Documents	30
Exhibit H	Rosati Face Mask email	32
Exhibit I	Notice of Trial-Dual Employment	35
Exhibit J	Unfiltered Conservative email	39
Exhibit K	Video Job 651 email	40
Exhibit L	Rosati charges	43
Exhibit M	OOS letter	44
Exhibit N	Email	48

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

72

B. Gallup

## E X H I B I T S (Continued)

GALLUP	DESCRIPTION	PAGE
Exhibit O	Apr. 9, 2021 email	51
Exhibit O1	Mar. 17, 2021 email	52
Exhibit O2	Apr. 16, 2021 email	53
Exhibit P	Email to Erin regarding password	54
Exhibit Q	Email	55
Exhibit R	Email regrading Instagram	56
Exhibit S	Reddit thread email	57
Exhibit T	Email regarding News 12	59
Exhibit V	Rosati Covid Clinic	63
Exhibit W	October 5, 2022 email	65
Exhibit X	October 5, 2022 email regarding Twitter	66
Exhibit Y	January 20, 2021 email	66

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

73

C E R T I F I C A T I O N

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

I, RUTHAYN SHALOM, a Court Reporter  
and Notary Public within and for the State  
of New York, do hereby certify:

That the witness whose deposition  
is hereinbefore set forth, was duly sworn  
by me, and that the within transcript is a  
true record of the testimony given by such  
witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage, and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 20th day of September, 2023.

  
RUTHAYN SHALOM

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

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ERRATA SHEET

NAME OF CASE: ROSATI v LIRR, et al.  
DATE OF DEPOSITION: September 7, 2023  
NAME OF DEPONENT: Benjamin Gallup

PAGE	LINE(S)	CHANGE	REASON
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\_\_\_\_\_  
BENJAMIN GALLUP

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2023  
\_\_\_\_\_, Notary Public.

\_\_\_\_\_  
MY COMMISSION EXPIRES:

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

75

<b>A</b>	<b>app</b> 22:16	<b>attorneys</b> 2:3,8 3:3	<b>beginning</b> 55:5 56:14
<b>able</b> 15:16 21:8 26:18	<b>appear</b> 18:16	<b>AUTHORITY</b> 1:9	56:16
27:13 32:14 33:24	<b>appeared</b> 41:24	<b>authors</b> 49:3	<b>behavior</b> 60:9,10
35:19 39:11 40:20	59:20,22 63:15	<b>automatically</b> 33:17	<b>behaviors</b> 61:12
43:2 44:18 48:20	<b>appears</b> 19:24 57:7	<b>Avenue</b> 2:4	<b>believe</b> 6:11 10:21
53:15 63:2	66:11	<b>avoid</b> 62:18	20:6,24 24:12 28:8
<b>absence</b> 8:9,22	<b>Apple</b> 21:21 22:16	<b>aware</b> 24:20 36:15	31:23 37:10,20,21
<b>account</b> 63:8 66:16	<b>apples</b> 69:24,24	42:12 56:2	38:15 40:5 41:6
<b>action</b> 73:17	<b>application</b> 37:12		42:4 47:7 50:21,25
<b>actions</b> 69:5	<b>appreciate</b> 23:15	<b>B</b>	54:17 57:19 60:4
<b>actively</b> 22:3	<b>approval</b> 36:14	<b>B</b> 4:1,2 5:1 6:1 7:1	65:19 66:21 67:6,14
<b>activities</b> 58:17	<b>approve</b> 37:13	8:1 9:1 10:1 11:1	70:12
<b>actual</b> 16:8,9,18,24	<b>approves</b> 37:13	12:1 13:1 14:1 15:1	<b>believed</b> 41:10
20:4 26:6 31:19	<b>Apr</b> 72:6,8	16:1 17:1 18:1,10	<b>Ben</b> 4:17,19 51:4
38:2 47:13 48:3	<b>April</b> 71:16	18:11 19:1 20:1	<b>Bendick</b> 10:21 11:20
<b>Adam</b> 67:25	<b>area</b> 9:10,10 34:13	21:1 22:1 23:1 24:1	12:23 13:4 15:24,25
<b>address</b> 4:5	35:2	25:1 26:1 27:1 28:1	17:5 20:15 21:22
<b>against-</b> 1:6	<b>article</b> 21:20,21	29:1 30:1 31:1 32:1	22:11 24:3,6 25:13
<b>agitated</b> 68:8	22:17	33:1 34:1 35:1 36:1	25:20 38:22 44:6,9
<b>ago</b> 61:17	<b>asked</b> 18:3,6 21:18	37:1 38:1 39:1 40:1	56:22 59:6
<b>AGREED</b> 3:2,7,11	22:2 31:4 35:3	41:1 42:1 43:1 44:1	<b>Benjamin</b> 1:17 4:14
<b>ahead</b> 4:12 5:19 15:4	45:14 54:7 61:23	45:1 46:1 47:1 48:1	70:21 71:5 74:5,18
19:19 26:20 28:18	62:17	49:1 50:1 51:1 52:1	<b>best</b> 33:22 37:4
40:22 42:25 52:16	<b>asking</b> 22:8 29:15	53:1 54:1 55:1 56:1	<b>beyond</b> 68:23
<b>al</b> 74:4	44:12,13,14 46:2	57:1 58:1 59:1 60:1	<b>big</b> 29:15,18,24,25
<b>allowed</b> 36:8	49:5,15 51:4 62:9	61:1 62:1 63:1 64:1	<b>bit</b> 19:16 51:7 56:9
<b>Amandelori</b> 67:22	<b>assignments</b> 41:18	65:1 66:1 67:1 68:1	66:7 69:20,23
68:2	<b>assistant</b> 6:23 7:3 8:4	69:1 70:1 71:1,10	<b>blank</b> 67:3
<b>Americas</b> 2:4	8:24 10:4 25:10,17	71:14 72:1,3	<b>block</b> 33:16
<b>amount</b> 7:20 13:15	29:21,22 30:3 40:5	<b>Babylon</b> 24:7	<b>blood</b> 73:18
14:2	<b>assisting</b> 11:12	<b>back</b> 10:17 14:18	<b>board</b> 30:7,7
<b>angry</b> 60:21,23	<b>assume</b> 11:19 23:16	21:2 22:23 39:20	<b>BOCHNER</b> 2:3
<b>answer</b> 4:22,23 5:12	49:6 61:5	43:17 56:16,22,23	<b>book</b> 29:4,5,15,18,23
5:19 14:24 15:2	<b>attached</b> 31:25 66:3	57:15,16,17	29:24,24 30:4,8,10
50:2,6,9 61:14	<b>attachment</b> 19:25	<b>bad</b> 27:22	30:13,16
<b>answering</b> 61:19	20:8	<b>ballpark</b> 69:9	<b>bother</b> 32:6
62:18	<b>attachments</b> 31:7,10	<b>Barnes</b> 2:14	<b>bottom</b> 18:17 32:17
<b>Antifa</b> 19:25 20:20	31:25	<b>based</b> 23:22 24:3	33:11,16 51:9 56:7
38:7,16	<b>attention</b> 20:5,10,12	26:10 27:8 28:22	56:17
<b>anybody</b> 13:8 17:21	20:22 36:5 57:25	35:25 37:15 40:14	<b>Boulevard</b> 4:5
38:2	58:5 59:19 60:8	41:4 67:20	<b>Boys</b> 22:5,12
<b>anymore</b> 17:10 54:13	65:14	<b>basically</b> 13:3 33:17	<b>break</b> 5:17,20,21
58:21	<b>attitude</b> 60:12,15,19	58:17	41:12 42:22
<b>anyway</b> 10:11	61:9	<b>Bates</b> 31:8	<b>breaks</b> 50:24
<b>apologize</b> 7:12	<b>attorney</b> 4:11	<b>began</b> 13:21	<b>brief</b> 27:20

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

76

<b>bring</b> 22:19 24:9,12 <b>brought</b> 13:13 37:21 57:25 58:4 59:19 60:7,10 65:14 <b>bulletin</b> 30:6,7 <b>bullhorn</b> 64:12 <b>bunch</b> 33:16 <b>busy</b> 14:11,11 <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <b>C</b> 2:2 19:14,15 71:15 73:2,2 <b>call</b> 19:14 21:6 23:6 27:19,21,21 30:21 36:16 39:9 <b>called</b> 65:10 <b>calling</b> 28:14 43:2 44:15 51:8 59:11 62:23 <b>Camposano</b> 25:5,18 <b>carry</b> 30:16 <b>case</b> 1:6 11:12 18:16 22:21 23:15 74:4 <b>cases</b> 13:13,18 69:18 <b>cellphone</b> 17:8 42:14 <b>certain</b> 13:25 36:10 <b>certify</b> 73:10,16 <b>change</b> 29:14,16 30:11 51:7 74:5 <b>changed</b> 6:9,11 29:12 <b>changes</b> 29:12 <b>characterize</b> 14:20 14:23 <b>charge</b> 36:22 <b>charges</b> 47:24 71:24 <b>chart</b> 9:12 <b>chasing</b> 60:5 <b>check</b> 17:21 30:6 31:17 32:7 43:17 58:23 <b>checked</b> 17:17,20,22 57:8 <b>Chino</b> 67:21,21 <b>chronological</b> 18:18 <b>circumstances</b> 70:3	<b>clear</b> 16:16 <b>clearly</b> 42:3 <b>clinic</b> 64:6,11,11,13 72:13 <b>close</b> 57:18 <b>code</b> 48:14 <b>collecting</b> 8:6 <b>collection</b> 8:11 9:17 10:11,12,14 37:2 <b>collections</b> 8:6 <b>collectors</b> 8:25 <b>column</b> 28:9 <b>combative</b> 60:5,21,22 61:11,12 <b>come</b> 4:25 13:24 21:2 36:23 37:3 <b>comes</b> 30:5 <b>coming</b> 13:18,19 14:4 24:21 42:7 69:22 <b>COMMISSION</b> 74:23 <b>communicate</b> 11:24 12:18 <b>communicated</b> 12:15 12:16 <b>communications</b> 11:20 12:23 13:3 <b>company</b> 17:6 <b>compare</b> 69:15 <b>comparison</b> 69:25 <b>compliance</b> 6:13 8:2 <b>complied</b> 17:17 <b>comply</b> 35:13 <b>computers</b> 53:22,24 55:7 <b>conclusion</b> 45:15 46:2 <b>conduct</b> 45:21 47:9 47:11,24 48:2 <b>conductor</b> 6:23 7:3,4 7:5 29:19,21,23 30:3 40:6 59:20,20 <b>conductors</b> 8:4,5,24 8:24 9:4,6,8,21,24 9:24,25 10:4,4	14:16 25:10,10,17 25:17 29:6 <b>conference</b> 1:18 16:9 <b>confrontational</b> 60:13 <b>confused</b> 7:12 <b>CONNOR</b> 2:10 <b>Conservative</b> 65:11 65:24 66:15 71:23 <b>contact</b> 13:22 68:10 <b>content</b> 23:14 37:24 38:3 42:9,11 <b>context</b> 43:20 <b>Continue</b> 26:25 <b>Continued</b> 72:3 <b>control</b> 8:9,22 <b>conversation</b> 17:2 43:21 49:7,8 56:13 64:3,4 67:4 68:22 <b>conversations</b> 22:10 68:14,16 <b>converted</b> 31:16 <b>copies</b> 31:7 <b>copy</b> 29:20 70:16 <b>correct</b> 7:21 9:2 10:22 11:6 12:16 13:15 17:3 18:8 28:12 33:19 37:16 40:3 41:25 43:15 45:10 46:4,8 56:19 57:3,4 61:7 66:19 <b>correctly</b> 33:15 59:3 <b>counsel</b> 4:23 30:24 <b>count</b> 37:8 <b>COUNTY</b> 73:6 <b>couple</b> 11:23 31:9 38:7 67:7 69:10 <b>course</b> 24:17 <b>court</b> 1:1 5:8,11 73:8 <b>Covid</b> 24:6 64:6,11 64:11,12 72:13 <b>Craig</b> 2:5 4:10 43:13 <b>craig@bochner.law</b> 2:6 <b>crazy</b> 61:3	<b>crew</b> 8:22 46:15 48:14 <b>cshea@hnrklaw.co...</b> 2:10 <b>current</b> 6:5,17 <b>currently</b> 5:24 9:12 9:13 25:6 <b>cursed</b> 60:25 <b>curser</b> 33:24 34:2 <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <b>D</b> 2:14 21:6,7 71:2,16 <b>Damato</b> 8:12,14 9:4 11:24 <b>date</b> 28:3,5,6,7 43:14 74:4 <b>dates</b> 43:17 <b>day</b> 9:6 14:13 24:24 26:8 45:25 48:7 70:23 73:21 74:20 <b>days</b> 63:6 <b>deal</b> 8:20 9:5 <b>dealing</b> 7:22 12:22 34:16 46:13 69:13 <b>dealings</b> 7:20 <b>deals</b> 8:21,23 <b>dealt</b> 12:13 14:2,19 69:4 <b>December</b> 71:14 <b>decision</b> 13:2,10,11 44:8 50:12 <b>decisions</b> 11:18 <b>Defendants</b> 1:10 2:8 <b>deliver</b> 52:8 <b>delivered</b> 52:9 <b>department</b> 29:24 35:7 <b>department's</b> 20:5,10 20:11 <b>DEPONENT</b> 74:5 <b>deposed</b> 4:18 <b>deposition</b> 31:2 73:11 74:4 <b>depositions</b> 7:10 31:18
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ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

77

<b>derailment</b> 46:14,16 <b>describe</b> 14:7 61:15 <b>description</b> 27:20 58:19 71:11 72:4 <b>details</b> 16:8,15,24 23:23 45:25 57:13 59:24 62:2 64:10,16 <b>determined</b> 41:15 <b>device</b> 47:2 <b>different</b> 7:7,15 8:21 9:22 12:24 13:18 16:14 21:4 26:12 27:17 29:6 34:8,9 34:10,20 48:11 65:22,23 66:13 70:2 <b>direct</b> 11:5 35:3,5,8 35:11,13 49:13,25 50:2,4,11 <b>direction</b> 49:24 <b>directly</b> 12:15,18 <b>disciplinary</b> 6:8 10:13 11:8,17 13:13 13:21 14:6,18 22:7 55:11 69:5,14 <b>discipline</b> 10:4,10 11:11 13:11 14:4 24:5,9,10,11,15,17 25:11,13,19 26:4 70:4,8 <b>discovered</b> 36:12,12 37:4,21 60:6 <b>discussing</b> 16:10 38:2 <b>discussion</b> 38:14 <b>discussions</b> 33:13 37:23 39:3 <b>distancing</b> 24:8 <b>DISTRICT</b> 1:1,1 <b>divided</b> 11:9 <b>docked</b> 26:7 <b>document</b> 5:2 15:21 18:24 19:6,21 21:12 23:13,20 27:12,22 27:24 28:20 32:20 34:2 35:23 39:15 40:24 43:8,11,14	45:2,4 48:25 49:9 52:17 59:15 62:25 66:10 <b>documents</b> 7:19 13:12 15:3,6,8 29:10 31:15 52:23 53:3 54:14 71:20 <b>dog</b> 21:6 <b>doing</b> 4:25 5:7 10:8 10:18 21:24 45:12 <b>Dominic</b> 67:21 <b>door</b> 8:9 <b>double</b> 10:9,18 <b>dragged</b> 69:3 <b>drive</b> 51:17,23 52:5 52:23 53:4,5,10,10 53:21,24,25 54:25 55:13 56:2,3 <b>drug</b> 69:19,21 <b>duel</b> 20:22 21:3 36:13 36:17,21,22 37:8,11 38:14 39:4 47:20 70:5 <b>duly</b> 4:3 73:12 <b>duties</b> 7:24 11:9 34:19 <b>duty</b> 7:5 10:9,18 41:12,20 42:10,13	<b>email</b> 16:2,4 18:16 19:2 22:22 25:22 31:11 32:16 33:9,11 39:19 43:10 49:4 51:15 52:14 54:16 57:5 71:13,14,15,16 71:21,23,24,25 72:6 72:7,8,9,10,10,11 72:12,14,15,16 <b>emails</b> 22:24 23:9 33:14,17 38:7,11 39:17 51:22 54:8,10 60:11 <b>employed</b> 5:24 6:2 36:7 <b>employee</b> 14:7 27:19 34:22 35:8,13 45:13 47:9,24 58:9 60:7 64:15 <b>employee's</b> 17:23 <b>employees</b> 29:7 34:14 45:22 46:18 <b>employees'</b> 18:7 <b>employment</b> 20:22 21:3 36:9,11,13,17 36:21,22 37:8,11 38:14 39:4 47:20 70:5 71:22 <b>encrypt</b> 55:6 <b>encrypted</b> 55:9 <b>ended</b> 10:17 <b>Eng</b> 12:8 <b>engineers</b> 29:7 <b>entered</b> 28:3,6 <b>environment</b> 9:8 <b>Erin</b> 20:16 24:4 44:13,14 55:3 72:9 <b>ERRATA</b> 74:2 <b>Esq</b> 2:5,10,14,15,16 <b>et</b> 74:4 <b>Eugene</b> 67:21 <b>everyday</b> 58:22 <b>evidence</b> 55:16 <b>exact</b> 45:13,25 48:2 61:2	<b>exactly</b> 34:7 57:13 <b>examination</b> 1:17 3:4 3:8 4:8 71:7 <b>examined</b> 4:6 <b>example</b> 61:16 <b>exchange</b> 51:15 <b>exhibit</b> 15:14 18:10 18:11 19:14,15 21:4 21:6,7 22:20 23:6,7 26:16,17 28:14,15 30:22,23 31:12 32:11,12 35:17,18 38:22 39:9,10 40:18 40:19 43:2,4 44:16 44:17 48:18,19 51:9 51:11 52:13,14 53:6 53:13,14 54:19,20 55:20,21 56:5,6 57:19,20 59:11,12 62:23 63:20,22 65:4 65:5,6 66:5,6,12,22 66:25 71:13,14,15 71:16,16,18,19,20 71:20,21,23,24,24 71:25,25 72:6,7,8,9 72:10,10,11,12,13 72:13,14,16 <b>exhibits</b> 18:15 23:10 31:3,5,11 55:19 56:24 67:6 <b>existence</b> 38:20 <b>exists</b> 54:5 <b>expected</b> 30:13 <b>experience</b> 69:13 <b>EXPIRES</b> 74:23 <b>explain</b> 33:21 45:18 61:20 <b>explained</b> 44:8 <b>exploratory</b> 45:21 <b>extreme</b> 14:15
	<hr/> <b>E</b> <b>E</b> 2:2,2 4:2 23:6,7 71:2,10,16 72:3 73:2 <b>E-n-g</b> 12:8 <b>E.J</b> 67:21 <b>earlier</b> 8:12 16:3 38:6 38:21 47:18 54:7 64:18 65:17 66:12 <b>early</b> 7:23 <b>East</b> 2:9 <b>Easy</b> 19:13 <b>Ebay</b> 37:7 <b>effect</b> 58:15 <b>either</b> 14:15 25:15 38:7,18 57:11 69:21		
		<hr/> <b>F</b> <b>F</b> 26:16,17 71:18 73:2 <b>f'ing</b> 61:2 <b>face</b> 33:6 42:3 47:19	

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

78

71:20 <b>fact</b> 24:3,11,13 33:11 42:9 45:5 <b>facts</b> 14:22 45:12,15 45:19,24 46:5,6,15 46:18,21,22 47:5 50:7,24 56:25 61:10 62:7 67:24 <b>failed</b> 69:21 <b>failure</b> 37:17 <b>failures</b> 69:19 <b>fair</b> 7:20 11:19 12:14 13:15 14:14 15:2 18:5 37:6 69:4 70:4 <b>fairly</b> 15:10 55:20 <b>fall</b> 9:6,11,17 <b>fallen</b> 10:11 <b>far</b> 13:11 36:19 69:16 69:16 <b>fare</b> 8:6,6,10 9:17 10:10,12,13 37:2 <b>feel</b> 5:5 <b>field</b> 11:15 13:23 30:3 35:9 <b>figure</b> 12:7 15:8 25:16 28:22 41:5 <b>figured</b> 41:20 <b>files</b> 31:19 <b>filing</b> 3:8 <b>fill</b> 36:9 37:12,17 <b>filled</b> 36:13 <b>filter</b> 59:10 <b>finally</b> 68:18 <b>find</b> 21:18 38:8 46:16 <b>fine</b> 4:17 12:6 <b>finish</b> 5:10 <b>first</b> 4:3,11 8:17 15:13 18:20,22 19:3 20:9 25:23 27:5,15 27:18,18,25 33:2 36:15 39:25 44:25 <b>five</b> 8:3 14:8 69:10,12 <b>flash</b> 51:17,23 52:5 53:5,10 56:2,3 <b>Floor</b> 2:4,9	<b>focusing</b> 8:10 <b>folder</b> 22:24 <b>follow</b> 18:7 <b>follows</b> 4:7 <b>forget</b> 53:23 <b>form</b> 3:12 37:17 59:19 <b>formal</b> 46:9 <b>format</b> 4:22 23:10,11 23:13 43:16 <b>former</b> 12:9 <b>forms</b> 36:9 <b>forth</b> 73:12 <b>forward</b> 29:16 <b>found</b> 59:22 <b>four</b> 57:6 <b>FOYE</b> 1:9 <b>free</b> 5:5 <b>fuck</b> 21:17 38:8,15 <b>fully</b> 24:20 <b>further</b> 3:7,11 16:22 38:5 41:17 70:14 73:16 <hr/> <b>G</b> <b>G</b> 2:10 4:2 28:14,15 71:19 <b>G1</b> 30:22,23 71:20 <b>Gallup</b> 1:17 4:1,10 4:14 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 12:19,20 13:1 14:1 15:1,14 16:1 17:1 18:1,10,11 19:1,14 19:15 20:1 21:1,6,7 22:1 23:1,6,7 24:1 25:1 26:1,16,17 27:1 28:1,14,15 29:1 30:1,22,23 31:1,6 32:1,11,12 33:1 34:1 35:1,17 35:18 36:1 37:1 38:1 39:1,9,10 40:1 40:17,19 41:1 42:1 43:1,2,4 44:1,16,17	45:1 46:1 47:1 48:1 48:17,19 49:1 50:1 51:1,9,11 52:1,13 53:1,13,14 54:1,18 54:20 55:1,20,21 56:1,4,6 57:1,20 58:1 59:1,12 60:1 61:1 62:1,23 63:1 63:22 64:1 65:1,5,6 66:1,5,6,22,25 67:1 68:1 69:1 70:1,21 71:1,5,11 72:1,4 74:5,18 <b>games</b> 62:16 <b>Gassert</b> 40:2,6 <b>general</b> 25:7 29:9 34:19 44:5 67:7 <b>generally</b> 6:15 46:23 <b>generated</b> 33:10,17 <b>genesis</b> 20:25 <b>getting</b> 57:18 <b>give</b> 6:24 11:17 15:18 35:8,11,13 49:13,25 50:10 61:16 69:9 <b>given</b> 26:12 29:23 30:6 49:9,10,24 73:14 <b>giving</b> 24:22 <b>GN</b> 29:3,8,10,11,12 29:13,16 30:5,9,11 71:19 <b>GNs</b> 30:7 <b>go</b> 4:12,21 5:17,19 13:25 15:4 18:17 19:19 24:21 26:20 27:16 28:18 29:25 34:13 39:20 40:22 42:25 43:17 52:16 56:7,16 <b>goes</b> 28:2,3 29:24 41:16 55:12 <b>going</b> 6:8 10:3 14:10 15:3,15 18:9,15 19:14 21:5 23:5 24:23 25:20 26:15	26:15 28:13 30:21 30:21 32:10,11 34:18 35:16,16 39:8 39:8 40:17 42:21,25 44:15 46:14 48:17 51:7,8 52:12 53:13 55:19 56:7 57:12,12 62:6,22 63:19 64:5 66:22 67:15 69:2 <b>good</b> 7:13 11:7 14:13 27:22 <b>great</b> 5:23 21:2 28:25 33:23 <b>group</b> 22:6 <b>groups</b> 9:23 <b>guess</b> 4:11 37:3 42:15 45:5 <b>guessing</b> 13:14 <b>guiding</b> 11:11 <b>guy</b> 14:24 <hr/> <b>H</b> <b>H</b> 32:11,12 71:10,20 72:3 <b>Haig</b> 43:24 44:12 <b>half</b> 31:5 <b>hand</b> 8:8 42:3 61:3 73:21 <b>hands</b> 11:16 <b>happen</b> 5:18 67:25 <b>happened</b> 17:20 46:17 57:2 68:25 <b>happens</b> 5:3 <b>hard</b> 25:16 <b>head</b> 5:13,13 9:2 25:9 <b>hear</b> 5:2 58:24 68:20 68:23 <b>heard</b> 56:23 57:12 68:18 <b>Hechtkopf</b> 2:15 <b>held</b> 1:17,18 46:11 <b>Helene</b> 2:15 <b>help</b> 27:12 <b>Helpfully</b> 15:10 <b>hereinbefore</b> 73:12
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ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

79

<b>hereto</b> 3:4 <b>hereunto</b> 73:20 <b>hey</b> 14:10 58:14 <b>Hicksville</b> 41:19 42:6 <b>hierarchy</b> 47:23 <b>higher</b> 25:4,12 <b>HOGUET</b> 2:8 <b>hold</b> 46:20 53:2 <b>holding</b> 42:2 <b>horrible</b> 12:21 <b>hour</b> 42:21 <b>hours</b> 36:19 <b>how's</b> 14:10 <b>HR</b> 36:14 <b>hundred</b> 69:11 <b>hundreds</b> 29:25	<b>injured</b> 10:8,16,17 <b>insert</b> 30:8 <b>Instagram</b> 56:21,23 72:11 <b>instance</b> 6:16 <b>instances</b> 14:3 <b>instructed</b> 15:25 17:21 <b>instructions</b> 17:18 <b>interactions</b> 14:8 60:17 <b>interested</b> 58:11 73:19 <b>interesting</b> 40:9,11 40:15 <b>internally</b> 31:17 <b>interpret</b> 27:12 <b>interview</b> 45:22 <b>investigating</b> 22:3 <b>investigation</b> 21:24 46:10 47:8 48:3 <b>involved</b> 8:2,4 10:13 10:14 16:13 19:8,22 20:15 23:23 25:12 25:19 27:8 28:23 33:5,7,12 36:20,25 37:11 41:4 46:15 56:15 67:23 <b>Island</b> 1:8 6:3 24:16 47:9 <b>issue</b> 11:8 16:11 20:19 22:6,13 26:5 31:22 33:6 37:16 55:12 60:19 <b>issues</b> 4:25 10:2,10 10:13 13:21 14:6,18 42:8 46:19 69:14	<b>Jason</b> 2:14 <b>job</b> 6:15,15 7:4,24 8:2,21 18:6 30:4,6 34:19 41:11,17,18 41:18 58:18,19 71:24 <b>jobs</b> 9:9 29:8 <b>judging</b> 44:3 <b>jumped</b> 61:4 68:8 <b>June</b> 71:17	<b>knowledge</b> 20:11 67:10 <b>Kustoff</b> 42:16
<hr/> <b>I</b>	<hr/> <b>J</b>	<hr/> <b>K</b>	<hr/> <b>L</b>
<b>IBM</b> 27:19 <b>identifiable</b> 16:14 <b>Identification</b> 15:14 18:11 19:15 21:7 23:7 26:17 28:15 30:23 32:12 35:18 39:10 40:19 43:4 44:17 48:19 51:11 52:15 53:14 54:20 55:21 56:6 57:20 59:12 63:22 65:6 66:6,25 <b>identified</b> 64:15 <b>impression</b> 62:13 <b>in-person</b> 45:9 <b>incident</b> 19:12 28:7 46:13 55:15 69:22 <b>incidents</b> 45:23 47:19 48:5 69:19 <b>individual</b> 1:3,9 11:13 24:15 <b>individuals</b> 24:9 33:13 <b>information</b> 11:17 55:8 <b>informed</b> 50:15 <b>initial</b> 27:18	<b>injury</b> 10:8,16,17 <b>insert</b> 30:8 <b>Instagram</b> 56:21,23 72:11 <b>instance</b> 6:16 <b>instances</b> 14:3 <b>instructed</b> 15:25 17:21 <b>instructions</b> 17:18 <b>interactions</b> 14:8 60:17 <b>interested</b> 58:11 73:19 <b>interesting</b> 40:9,11 40:15 <b>internally</b> 31:17 <b>interpret</b> 27:12 <b>interview</b> 45:22 <b>investigating</b> 22:3 <b>investigation</b> 21:24 46:10 47:8 48:3 <b>involved</b> 8:2,4 10:13 10:14 16:13 19:8,22 20:15 23:23 25:12 25:19 27:8 28:23 33:5,7,12 36:20,25 37:11 41:4 46:15 56:15 67:23 <b>Island</b> 1:8 6:3 24:16 47:9 <b>issue</b> 11:8 16:11 20:19 22:6,13 26:5 31:22 33:6 37:16 55:12 60:19 <b>issues</b> 4:25 10:2,10 10:13 13:21 14:6,18 42:8 46:19 69:14	<b>Jason</b> 2:14 <b>job</b> 6:15,15 7:4,24 8:2,21 18:6 30:4,6 34:19 41:11,17,18 41:18 58:18,19 71:24 <b>jobs</b> 9:9 29:8 <b>judging</b> 44:3 <b>jumped</b> 61:4 68:8 <b>June</b> 71:17	<b>knowledge</b> 20:11 67:10 <b>Kustoff</b> 42:16

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

80

<b>looks</b> 7:19 24:13 31:6 31:16 43:13 57:5 63:6 67:15 <b>lot</b> 7:11 15:5,7 24:7 24:14 36:18 66:23	<b>meant</b> 21:19 <b>media</b> 16:5 17:23 18:7 21:16 24:14 38:23 41:9 64:10 71:16 <b>meet</b> 60:14 <b>meeting</b> 16:22,24 17:14,20 38:22 45:9 49:20 <b>member</b> 58:9 <b>mention</b> 22:5 68:5 <b>mentioned</b> 20:9,14 41:24 <b>messages</b> 52:24 <b>met</b> 15:24 67:8 <b>METROPOLITAN</b> 1:9 <b>Michael</b> 20:15 44:6 56:22 <b>middle</b> 33:23 <b>Mike</b> 10:21 15:24,25 49:4 51:4,5 57:16 <b>minutes</b> 14:9 <b>missing</b> 31:4 32:8 <b>Monday</b> 25:24 <b>months</b> 57:6,6,9 <b>morning's</b> 31:2 <b>motion</b> 16:18 <b>motions</b> 61:3 <b>MSG</b> 31:19 <b>MTA</b> 2:14 24:16 71:16 <b>multiple</b> 69:5	43:21 <b>necessarily</b> 28:7 <b>need</b> 5:12,17,21 18:19 32:18 44:21 48:23 49:5,16 <b>needed</b> 29:17 50:13 <b>needing</b> 58:16 <b>negative</b> 14:12 <b>never</b> 12:13,14,16 49:13 55:17 <b>new</b> 1:1,20 2:5,5,9,9 4:4,6 30:5 55:4 73:4 73:6,10 <b>NEWMAN</b> 2:8 <b>news</b> 21:21 22:16 59:21 60:3 72:12 <b>nods</b> 5:13 <b>nonchalant</b> 61:11 <b>noncompliance</b> 27:24 33:9,10 55:14 <b>noncompliances</b> 13:19 <b>normally</b> 17:22 36:22 48:13 49:10 55:11 55:13,14 <b>Notary</b> 1:19 3:5 4:3 70:25 73:9 74:20 <b>note</b> 43:13 <b>noted</b> 70:19 <b>notice</b> 1:18 28:10 29:9 71:21 <b>noticed</b> 7:10 <b>notification</b> 53:3 <b>notifications</b> 52:25 <b>notify</b> 45:5 <b>November</b> 71:13 <b>number</b> 10:20 11:20 13:13 27:19 28:4,11 29:11 63:13,16 66:18 <b>numbers</b> 31:8,13 <b>numerous</b> 61:13	<b>O1</b> 52:13,14 72:7 <b>O2</b> 53:13 72:8 <b>object</b> 4:24 <b>Objection</b> 12:4 13:16 18:2 37:9,19 42:17 47:25 60:16 61:24 <b>objections</b> 3:12 <b>observation</b> 13:8 <b>observations</b> 27:22 <b>observe</b> 9:20,21 34:14 <b>observed</b> 8:7 55:15 62:12 <b>observing</b> 8:4 9:24 <b>obstructionist</b> 62:13 <b>obviously</b> 4:23 13:12 68:15 <b>occurred</b> 16:3 31:8 <b>October</b> 71:15 72:13 72:14 <b>offhand</b> 23:22,24 26:9,14 39:23 41:3 47:14 48:5 51:3,6 51:16 53:12 62:21 63:4,10 66:4 67:22 <b>office</b> 8:22 24:4 31:17 36:23 50:22 51:24 52:9,11 59:9 <b>officer</b> 46:24 62:7 <b>officer's</b> 13:10 <b>officers</b> 46:25 <b>offices</b> 24:7 <b>officials</b> 51:2 <b>Oh</b> 14:11 <b>okay</b> 5:15 6:18 12:6 15:2,2,9,12,16,20 18:12,21 19:17 20:18 21:2,13,23 26:24 27:2,4 28:16 30:11 32:19,22 33:15 35:15 39:25 40:8,17,25 42:15 43:3 44:7,18,22,23 46:9,22 48:6,16 49:3,15 50:8 51:13
<hr/> <b>M</b> <b>M</b> 4:2 44:16,17 71:25 <b>main</b> 27:11 <b>major</b> 69:21 <b>making</b> 11:17 13:3 17:7 38:24 40:15 42:14 <b>management</b> 48:15 <b>manager</b> 6:12 7:6,7,8 7:25 8:7 9:10,18,19 10:7 13:23,25 34:7 34:11 35:6 44:4 55:15 <b>managers</b> 8:3 9:16 9:20,20,23 10:19 34:6,9,10,13,15 <b>Mar</b> 72:7 <b>mark</b> 52:13 54:18 <b>marked</b> 15:14 18:10 18:11 19:15 21:7 23:7 26:17 28:15 30:23 32:12 35:18 39:10 40:19 43:4 44:17 48:19 51:11 52:14 53:14 54:20 55:21 56:4,6 57:19 57:20 59:12 63:20 63:22 65:5,6 66:6 66:25 <b>marking</b> 48:17 <b>marriage</b> 73:18 <b>Mary</b> 44:16 <b>mask</b> 33:6 47:20 71:20 <b>matter</b> 22:11 73:19 <b>mattered</b> 60:2 <b>mean</b> 17:4 27:17 34:23 45:18 60:22 <b>means</b> 29:10	<hr/> <b>N</b> <b>N</b> 2:2 4:2,2 48:18,19 71:2,25 73:2 <b>name</b> 4:10,13 15:5 20:3 27:18 40:6 65:15 74:4,5 <b>names</b> 12:21 19:8,22 27:8 35:25 41:4 43:22 <b>native</b> 31:16 32:2 <b>nature</b> 20:17,24	<hr/> <b>O</b> <b>O</b> 51:9,11 72:6 73:2	

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

81

51:14 52:5,18 56:12 62:22 63:24 66:5,14 67:2 old 9:12,14 63:8 onboard 6:12 8:2,6,8 8:25 13:24 once 9:19 23:21 27:7 28:21 30:2 35:24 39:16 41:3 58:19 62:14 68:18 ones 17:10 32:5 43:15 66:20 online 20:6,23 OOS 49:5 52:14 71:25 open 15:13 operating 35:10 36:6 operation 55:15 operational 45:23 46:12 69:19 operations 8:9 34:17 opinion 60:15 61:22 orally 5:12 order 18:18 29:21 35:3,5,8,11,13 49:13,25 50:2,4,11 55:9,19 56:8 organization 9:11 outcome 73:19 Outlook 31:19 outside 36:8	34:18 38:13 46:9 58:18 62:6 67:4 particular 16:22 27:10 45:3 47:4 60:4 68:22 parties 3:4 73:17 Pasricha 2:16 31:24 pass 29:21 30:2 passed 59:8 password 54:25 55:2 55:3,4,10 72:9 passwords 53:23 PATRICK 1:9 Paul 54:19 pay 26:7 48:8,10,12 48:14 67:12 68:6 payroll 48:14 pdf 31:17 pending 5:19 71:18 Penn 34:16 people 11:14,23 19:2 20:15 23:22 28:23 39:17 55:12 59:4,5 64:12 66:13,13 67:18,23 69:7 percent 26:8,9 period 67:20 person 9:3 10:15 45:17 68:23 personal 46:19 personally 12:13 pertaining 8:5 perusing 18:24 19:6 19:21 21:12 23:20 28:20 32:20 35:23 39:15 40:24 43:8 48:25 52:17 59:15 62:25 66:10 phone 22:16 34:3 42:2 52:24,24 63:16 66:18 photos 51:22 phrase 21:21 22:15 22:17 38:9 physical 55:16	picture 38:3,4 Plaintiff 1:4 2:3 platform 40:13 41:14 41:16 42:5 platforms 41:9 playing 62:16 please 5:3 24:19 35:21 40:23 43:6 PLLC 2:3 Plus 42:16 point 5:17 10:9,16 16:18 17:9 20:4 21:23 22:4 24:6 36:5 37:2 39:5 41:8 42:12,20 49:24 50:15 51:21 52:22 55:2 56:2 57:11 58:10 64:9,17 67:14 67:24 68:9 policy 20:22 21:3 24:14,16,18 70:5 71:17 polite 60:18 political 20:23 popped 22:17 popping 52:24 portion 10:7 position 6:4,22 9:12 9:14 10:15 11:15 25:6,8,18 36:24 positive 14:12 possession 53:11 possibly 16:17 57:12 post 16:9,24 17:23 63:15 64:10 posting 70:8 posts 16:5,10,12,23 18:7 21:16 38:23 39:5 40:7 65:25 preference 31:13,14 present 2:12 22:20 47:2 president 12:9 pretty 60:17,18 preview 15:4 18:14	previous 37:15 53:6 56:24 previously 17:11 67:11 prewritten 62:8 prior 14:6 37:17 51:25 52:3 61:8 Priya 2:16 31:24 Probably 31:5 69:12 problem 53:21 54:24 proceedings 22:7 process 4:21 10:10 25:19 36:21 37:11 processing 31:21 produced 31:15 professional 60:18 progress 6:25 progression 34:10 promoting 38:19 property 16:15,17 17:7 30:18 38:24 70:9,11 protected 54:25 55:9 Proud 22:5,12 provide 24:17 51:23 public 1:20 3:5 4:4 58:9 70:25 73:9 74:20 purchasing 70:16 purpose 32:5 pursuant 1:17 pushed 60:24 put 22:23 29:14 30:21 31:4,11 32:10 33:8 35:12 51:21 53:24 putting 32:6 52:22
<b>P</b>			<b>Q</b>
P 2:2,2 4:2 54:19,20 72:9 p.m 1:13 70:19 page 33:23 36:6 57:14 71:7,11 72:4 74:5 pages 29:25 paper 29:9 paperwork 24:22 36:13 paragraph 34:21 part 18:5 26:4 34:18			qualified 7:4 29:22 qualify 36:17 question 4:12,22 5:18 5:20 7:15 13:7 14:25 30:25 44:25 47:16 49:20 62:16

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

82

62:18 <b>questions</b> 3:12 4:22 26:22 47:14 50:6,9 61:13,14,18,23 62:2 62:20 67:7 70:12,14 <b>quick</b> 16:2 27:23 <b>quickly</b> 15:11 55:20 <b>quite</b> 58:24	<b>reasons</b> 8:5 46:11,20 <b>recall</b> 12:2,2 14:12 16:7,8,11,19,23 17:14,16,19 18:25 19:7,9,10,11 20:13 20:18,21,24 22:6,10 23:22 24:23 26:11 33:5,7 35:24 37:23 38:5,6,11,21 39:3,5 39:18 40:11,13 41:22,23 42:8,11,12 43:20 44:11,12 45:11,13,23 47:4,11 47:13 48:2,4,6,7,9 49:6,8,9,19 50:4,8 50:10,12,14,17,18 51:2,15,16,17,20,25 52:3 53:9 54:8,14 56:3 58:8,10,11 59:5,23,24 60:2,19 60:24 61:2 62:2,4,9 62:10,19 63:4,8,9 63:12,13 64:2,4,5,8 64:14,16,19,22 65:3 65:10,13,17,21 66:2 67:3,8,16,18,22 68:7,12,15,21 70:6 70:10,11 <b>received</b> 23:9 <b>receptive</b> 16:25 <b>recess</b> 42:23 <b>recognize</b> 15:21,23 18:23,25 19:4,7,20 21:11,13,15 23:12 23:13,14,19,21,24 23:25 27:5,7,9 28:19,21 33:2,4,20 35:22,24 39:14,16 39:17 40:23 41:2,3 43:7,10,22 44:25 45:3 52:19,21 53:18 53:19,20 54:22,23 55:23,24 56:13,14 56:18,20 57:22,24 59:14,16,17 62:24	63:17,18 65:8,9 66:8 <b>recollection</b> 22:14 58:5 65:24 <b>record</b> 4:13 5:14 31:25 73:14 <b>recorded</b> 46:23 47:5 <b>recording</b> 47:2 <b>Reddit</b> 58:2,3,12,15 59:18 72:11 <b>refer</b> 4:15 7:17 13:19 26:7,16 29:4,19 31:12 32:11 34:5,6 35:17 49:4 <b>reference</b> 19:23 21:17 36:2,4 40:14 41:5,6 43:23 <b>referenced</b> 57:15 <b>references</b> 10:20 <b>referencing</b> 40:5 <b>referred</b> 35:4 38:7 <b>referring</b> 7:16 12:9 19:9,25 25:3 26:3 34:24 39:6 40:4 44:11 46:5,6 53:4 61:5 66:14 <b>refers</b> 16:4 19:10 28:24 29:8 39:25 42:18 <b>refused</b> 50:2,6,8 <b>REGAL</b> 2:8 <b>regarding</b> 11:20,24 12:19 22:12,21 38:23 45:22 72:9,12 72:15 <b>regrading</b> 72:10 <b>Regular</b> 14:24 <b>regulations</b> 29:6 36:10,19 <b>related</b> 10:10 20:19 21:4 24:16 37:23 48:4 51:17 52:12 70:5,8 73:17 <b>relation</b> 11:2 22:13 22:20	<b>relationship</b> 8:18 64:6 <b>relieved</b> 48:13 <b>remember</b> 13:17,17 13:18 16:9,15,21 19:23 20:7,13,14 21:19 25:5,8 28:22 33:10,12 37:20 38:2 44:13 45:16,25 50:25 57:13,15 58:7 58:13 61:17 64:10 68:18,19,25 <b>reminder</b> 24:18,18 <b>remotely</b> 4:25 5:8 <b>repeat</b> 28:5 <b>rephrase</b> 5:6 22:9 61:18 <b>rephrased</b> 62:10 <b>report</b> 9:4,8,9 11:5 <b>reported</b> 11:4 <b>reporter</b> 1:19 5:8,11 70:15 73:8 <b>reporting</b> 13:4,6 <b>represent</b> 23:8 <b>representative</b> 35:7 <b>representatives</b> 50:23 <b>represents</b> 25:10,17 <b>required</b> 30:9,16 <b>reread</b> 24:19 <b>reserved</b> 3:13 <b>reset</b> 55:3 <b>respective</b> 3:3 <b>responses</b> 37:15 <b>responsibilities</b> 8:21 9:21 30:4 <b>responsibility</b> 58:18 <b>rest</b> 56:14 <b>result</b> 46:12 <b>retiring</b> 10:18 <b>revenue</b> 6:13 8:2 <b>review</b> 39:13 <b>revision</b> 29:9 <b>ride</b> 13:25 34:13,17 <b>right</b> 11:22 28:4 34:2
<b>R</b> <b>R</b> 2:2 56:5,6 72:10 73:2 <b>railroad</b> 1:8 6:3,20 6:25 9:5,7,15 12:10 16:15,17,17,20 24:10,16 25:4 26:5 27:20 36:8 38:24 45:20 46:25 47:10 53:22 60:7 64:15 70:9,11 <b>railroads</b> 29:7 <b>rally</b> 59:20 60:3,9,9 60:11 <b>randomly</b> 18:3 <b>re-save</b> 53:2 <b>reaction</b> 69:16 <b>read</b> 5:2 15:16,18 18:20,22,25 19:3,19 21:10 23:18,21 26:20 27:4 28:18 30:8,10 32:17,25 35:21 39:20 40:22 40:25 43:6 44:20 48:23 52:16,18 53:17 54:21 55:22 56:8 63:20 66:8 <b>reading</b> 21:19 <b>reads</b> 62:7 <b>real</b> 49:24 <b>realized</b> 52:25 <b>really</b> 14:12,14 36:20 37:10 68:21 <b>reask</b> 61:25 <b>reason</b> 5:21 45:13 74:5			

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

83

35:2 46:13 55:16 59:18 62:15 <b>road</b> 16:23 <b>role</b> 8:18 10:3 11:11 13:7,9 <b>roles</b> 9:22 <b>room</b> 16:10 50:19,22 50:22 <b>Rosati</b> 1:3 4:11 6:7 6:16 7:17 10:2 11:21,25 12:15,19 12:23 13:14,22 14:19 15:25 16:10 17:9 19:25 20:19 21:17,25 22:12,13 22:21,24,24 24:12 25:23 26:12 27:3,16 30:9 33:6 35:3 36:6 36:12 38:23 40:7 41:9 45:6,24 47:5 47:19 49:5,16,21 50:20 51:18 58:2 59:22 63:15,15 64:6 64:19 65:16 67:9 68:10,16,20 69:14 71:20,24 72:13 74:4 <b>Rosati's</b> 22:7 27:4 56:21 <b>rudinely</b> 18:6 <b>rule</b> 17:8 27:23,25 28:2 29:14,17 30:12 35:14 71:19 <b>rules</b> 17:8 29:4,5,6,15 29:18,23 30:4,17 36:18 45:23 <b>running</b> 56:23 <b>Ruthayn</b> 1:19 4:3 73:8,25	<b>safety</b> 27:25 55:8 <b>sale</b> 38:17 <b>saw</b> 14:21 38:16 <b>saying</b> 16:16 35:5 68:19 <b>says</b> 16:25 24:4,11 25:23 27:3,15,19 34:3,21 35:2 41:17 42:6,16 44:8 47:8 49:15 51:4 55:5 62:8 63:8,11 <b>scheduled</b> 25:23 <b>screaming</b> 60:25 <b>screen</b> 15:15 51:22 52:25 63:11,14 66:11 <b>script</b> 49:5,10,12,16 <b>Script-Insubordin...</b> 52:14 <b>scroll</b> 18:19 19:3,16 26:21,23,25 27:2 32:18,21,23,24 44:21,22 48:22,23 49:2 51:10,12 56:9 56:10,11 63:2,23,25 66:7,23 67:2 <b>sealing</b> 3:8 <b>search</b> 22:21 23:2 54:11 <b>searched</b> 54:10 <b>searching</b> 54:7 <b>seat</b> 61:4 <b>second</b> 15:18 23:18 44:7 <b>see</b> 10:20 14:12 16:4 16:6 18:12 19:17,22 20:2 21:8 23:9,16 25:25 26:18 28:16 32:14 33:24 35:19 39:11 40:9,20 41:14 41:16 42:4,5 43:2 43:10 44:7,10,18 48:20 49:17 50:8 53:15 58:14 <b>seeing</b> 9:10 33:10,12	65:10 <b>seen</b> 13:8 60:11 <b>self-managed</b> 9:7 <b>selfie</b> 41:13 <b>selfie-type</b> 41:25 <b>selling</b> 20:5,23 36:7 37:7,18,24 38:4 65:18 <b>send</b> 31:10 35:3 <b>sensitive</b> 55:8 <b>sent</b> 21:21 31:19,20 32:7 39:18,23 57:5 63:11,12,14 66:12 <b>sentence</b> 25:23 44:7 <b>September</b> 1:12 73:21 74:4 <b>served</b> 34:22 <b>service</b> 6:6 7:9 9:16 9:19 10:6,8,12,15 10:25 36:19,25 45:7 45:16 46:3 48:7,10 49:6,11,16,22 50:3 50:13,16 52:2 56:25 57:10 60:20 61:6,9 63:7 67:10 68:5,17 69:6,7 <b>set</b> 53:23 73:12,21 <b>shakes</b> 5:13 <b>Shalom</b> 1:19 4:3 73:8 73:25 <b>share</b> 15:15 18:9,15 23:5 <b>shared</b> 53:24 <b>SharePoint</b> 54:4,11 54:15 64:18,24 65:2 <b>sharing</b> 19:13 <b>Shea</b> 2:10 12:4 13:16 18:2 31:14,23 32:9 37:9,19 42:17 43:13 47:25 60:16 61:24 70:14,15,17 <b>SHEET</b> 74:2 <b>Sherrard</b> 20:16 21:22 51:23 52:10 <b>shirt</b> 20:2,21 38:3,5	38:16,16 <b>shirts</b> 20:6,23 38:15 38:17 <b>short</b> 6:24 42:22,23 <b>shorthand</b> 1:19 34:6 <b>shot</b> 63:12,14 66:11 <b>shots</b> 51:22 53:2 <b>show</b> 15:4 21:5 26:15 28:13 35:16 39:8 40:17 42:25 44:15 48:17 51:8 53:13 55:19 62:22 63:19 66:22 <b>showing</b> 54:18 56:4 57:18 <b>shown</b> 28:6 <b>shows</b> 41:15 <b>sick</b> 34:22 <b>side</b> 8:11 <b>sign</b> 24:9,12,21,23 41:14 <b>signed</b> 30:10 <b>signing</b> 24:13,17 <b>signs</b> 8:9 24:15 <b>similar</b> 7:11 34:8 <b>Similarly</b> 5:12 <b>simply</b> 42:9 <b>single</b> 9:6 <b>sit</b> 50:23 <b>sitting</b> 16:9 <b>situation</b> 17:23 39:4 <b>six</b> 29:11 <b>skip</b> 65:4 <b>small</b> 14:10 <b>social</b> 16:5 17:23 18:7 21:16 24:8,14 38:23 41:9 64:9 71:16 <b>somebody</b> 18:3 49:13 60:6 <b>somewhat</b> 52:12 <b>soon</b> 23:8 <b>sorry</b> 12:21 20:19 <b>sort</b> 10:8 20:2,6 21:24 24:14 25:19
<hr/> <b>S</b> <hr/> <b>S</b> 2:2 57:19,20 71:10 72:3,11 <b>S-A-F-E-R</b> 27:21 <b>SAFER</b> 27:21,23 33:9			



ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

84

35:14 36:16 43:21 47:2,11,23 53:23 <b>sorts</b> 26:11 60:13 69:14 <b>sound</b> 7:11 <b>SOUTHERN</b> 1:1 <b>special</b> 7:5 <b>specialties</b> 34:20 <b>specific</b> 13:7,7 19:12 20:18 61:13 <b>specifically</b> 52:11 67:16 <b>spell</b> 67:25 <b>spending</b> 24:7 <b>spent</b> 13:14 <b>spoke</b> 34:3 <b>ss</b> 73:5 <b>start</b> 5:23 6:22 18:17 25:24 32:17 47:16 51:9 <b>started</b> 6:21,23 7:3 14:4 <b>starting</b> 14:7 27:15 37:17 <b>state</b> 1:20 4:4,12 73:4 73:9 <b>stated</b> 17:5 62:4 <b>statement</b> 14:22 45:12,15,19,24 46:5 46:14,18,20,22 47:4 49:23 50:7,24 56:25 61:10 62:7,8 67:23 <b>statements</b> 47:13 <b>STATES</b> 1:1 <b>stating</b> 4:4 <b>station</b> 34:16 41:16 <b>Stephen</b> 8:14 <b>Steve</b> 58:14 65:16 <b>Steven</b> 1:3 4:11 7:17 15:25 <b>stick</b> 14:14 <b>STIPULATED</b> 3:2,7 3:11 <b>street</b> 2:9 26:6,9 60:5 <b>strike</b> 7:14	<b>strings</b> 18:16 32:16 <b>stripes</b> 42:4 <b>stuff</b> 14:13 27:4 37:7 61:3 <b>stupid</b> 5:5 <b>subdued</b> 69:20,23 <b>subject</b> 20:4 <b>Subscribed</b> 70:23 74:19 <b>summary</b> 16:2 27:23 <b>superintendent</b> 6:5 7:9 8:20,23,23 9:16 10:6,24 25:7 34:12 36:25 44:5 <b>superintendents</b> 34:9 <b>supervise</b> 9:20 <b>supervising</b> 9:24 <b>support</b> 11:16 <b>supporting</b> 13:9 <b>supposed</b> 9:9 13:25 41:19 47:21 <b>sure</b> 19:5 22:8 23:11 24:20 39:22 53:8 <b>surprised</b> 68:6 <b>suspended</b> 67:11 <b>suspension</b> 25:24 26:6,8 <b>suspensions</b> 26:5,12 <b>Sutphin</b> 4:5 <b>sworn</b> 3:5 4:3 70:23 73:12 74:19 <b>synopsis</b> 6:24 <b>system</b> 27:21 33:9,18 48:14,15	42:21 46:3 49:5,11 49:16 50:3 57:21 58:21 59:13 60:20 62:23 65:7 <b>taken</b> 42:23 45:7 48:6 50:13 52:2 56:25 57:9 63:7 67:9 68:5,16 69:6,7 <b>talk</b> 5:4,10 6:14 14:10 <b>talked</b> 8:12 31:2 38:21 47:16,18 64:18 65:17 <b>talking</b> 5:10 6:15 16:19 60:12 <b>talks</b> 67:13 <b>tasked</b> 58:19 <b>tell</b> 5:16 15:7 17:4 18:14 23:25 25:2 27:16 29:2 59:9,13 60:22 <b>telling</b> 61:8 68:14 <b>tells</b> 25:20 <b>ten</b> 14:9 63:6 69:10 69:12 <b>term</b> 34:19 48:9,11 48:13 62:15 <b>terminals</b> 34:16 <b>terminated</b> 68:19,20 68:24 <b>terminology</b> 33:20 35:25 41:4 <b>terms</b> 10:3 19:11 28:23 29:2 33:21 <b>Tessatore</b> 25:9,16 <b>test</b> 29:22 30:2 69:19 69:21 <b>testified</b> 4:6 <b>testimony</b> 73:14 <b>thank</b> 5:22 21:2 22:19 28:13 29:18 30:19 32:9 35:15 48:16 55:18 63:19 <b>thing</b> 5:7,16 18:19 27:11 54:2	<b>things</b> 6:8 8:8,10,11 16:20 27:17 28:25 29:12,12,14 31:2,6 46:16 60:13 62:10 <b>think</b> 23:25 38:8,19 40:12 54:15 57:11 68:12 69:2 <b>thinking</b> 9:3 14:18 <b>thought</b> 69:2 <b>thousand</b> 14:16 <b>thread</b> 19:2 20:15 25:22 33:12 58:2,3 58:12 72:11 <b>three</b> 57:6,9 <b>threshold</b> 36:16 <b>thumb</b> 52:23 53:4,10 53:21,25 54:25 55:13 <b>Thursday</b> 24:5 <b>ticket</b> 8:24 <b>TikTok</b> 16:5 17:19 <b>TikToks</b> 39:6 <b>Tim</b> 43:24 44:12 <b>time</b> 6:7,9,12,16 7:14 7:22,24 9:18 10:2,5 10:7 11:3,4 13:15 14:21 18:18 21:20 22:14 24:7 25:6,8 27:10 29:11 30:6 34:22 39:22 41:15 41:16,20 42:6 44:3 44:4,6 53:9 58:16 59:18 60:18,20 67:20 68:11 70:19 <b>timeframe</b> 7:23 <b>times</b> 17:5 24:15 26:13 30:17 35:6,12 45:20 46:17 61:14 <b>timetable</b> 29:5 30:5 30:17 <b>timing</b> 22:15 <b>title</b> 6:5,9 44:3 <b>titles</b> 7:11 <b>TM</b> 34:3,4 <b>TMs</b> 34:6
--	---	--	--

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

85

<b>today</b> 4:12,16 6:14 8:12 31:11 47:18 <b>told</b> 20:16 22:23 49:24 50:15,17 51:21 61:4,5 67:9 67:11,14,16 68:4,25 <b>tomorrow</b> 46:15 <b>top</b> 25:22 42:15 48:22 <b>topics</b> 51:7 <b>train</b> 6:6 7:9 9:16,19 10:6,7,12,15,24 14:9,11 16:18 17:9 29:24 35:10 36:25 42:7,16 47:20 <b>Trainmen</b> 71:18 <b>trains</b> 8:7,8,25 11:14 13:24 14:2 34:14,17 41:20 <b>transcribed</b> 47:3,6 <b>transcript</b> 5:14 70:16 73:13 <b>TRANSIT</b> 1:9 <b>transportation</b> 6:12 7:6,7,8,25 25:7 34:5 34:7,10,11,12,15 35:7 44:4 <b>trial</b> 3:13 13:10 24:4 24:10,10 28:4,10,11 45:21 46:24,25 50:22 51:24 52:9,11 55:12 57:12 59:9 62:7 <b>Trial-Dual</b> 71:22 <b>true</b> 73:14 <b>try</b> 5:6,9,9 18:17 <b>trying</b> 12:6 15:8 27:14 39:20 46:6 53:25 62:15,17 <b>Tweet</b> 63:14 <b>twice</b> 62:14 <b>Twitter</b> 63:8,10,14 63:14 66:16 72:15 <b>two</b> 9:16 11:7,9 24:14 25:3,4 31:18 38:13	46:18 69:10 <b>type</b> 7:7 36:10 41:13 <b>typed</b> 40:9 <b>Typical</b> 14:10 <hr/> <b>U</b> <hr/> <b>U</b> 4:2 <b>Uhrich</b> 2:5 4:9,10 30:24 31:21 32:4,10 32:13 42:20,24 43:15,19 71:8 <b>ultimate</b> 11:10 <b>ultimately</b> 13:10 <b>unbecoming</b> 47:9,24 48:3 <b>understand</b> 5:5 28:5 30:11 36:3 61:21 62:9 <b>understanding</b> 33:15 37:16 46:4 47:15,22 61:22 62:5 <b>understood</b> 30:10 35:15 59:3 <b>Unfiltered</b> 65:11,24 66:14 71:23 <b>uniform</b> 16:13,17 17:6 38:25 40:14 41:9,11,21 42:4 59:23 64:14 70:9,10 <b>union</b> 25:9 50:21,23 51:2 67:13,14,18,23 <b>UNITED</b> 1:1 <b>unknown</b> 66:18 <b>update</b> 29:10 30:12 <b>updated</b> 30:5 <b>uploaded</b> 17:11 <b>USB</b> 55:6 <b>use</b> 48:9,12,13 62:16 <b>user</b> 65:15 <b>Usually</b> 5:18 <hr/> <b>V</b> <hr/> <b>v</b> 63:20,22 72:13 74:4 <b>various</b> 6:8 8:5,9 45:22 46:11,20 59:4	<b>vastly</b> 70:2 <b>versa</b> 5:10 <b>versus</b> 9:4 <b>vice</b> 5:10 <b>video</b> 22:3 40:15,15 41:13,15,21,22,25 42:9,13,14 58:21 60:4 64:9,25 71:24 <b>videos</b> 21:16 22:15 40:7 41:8 57:16 58:21 64:19 70:8 <b>Vincent</b> 25:5,18 <b>Vinny</b> 25:2,9,16 <b>Vinnys</b> 25:3,11 <b>violated</b> 24:19 27:25 27:25 <b>violation</b> 17:7 <b>violations</b> 45:23 <hr/> <b>W</b> <hr/> <b>W</b> 65:5,6 72:13 <b>waived</b> 3:9 <b>waivers</b> 24:10,11 <b>Walsh</b> 12:3,5 <b>want</b> 4:24 6:16 26:21 28:25 35:11 43:13 <b>wanted</b> 53:8 <b>wanting</b> 27:11 <b>wasn't</b> 33:12 56:15 58:18,19,22 59:2 60:8 61:10,19 62:4 <b>watching</b> 9:23 <b>way</b> 6:17 9:15 12:25 26:5 28:3 37:4 44:8 46:7 53:22 55:7 61:15,19,21 62:16 62:17 73:18 <b>ways</b> 31:9 <b>wearing</b> 33:6 38:19 47:19 59:25 64:14 64:17 <b>web</b> 36:6 57:14 <b>website</b> 36:6,11 38:4 38:17,18,20 59:21 65:10,15,18,22,23	65:25 <b>Wednesday</b> 24:5 <b>week</b> 58:23 <b>weeks</b> 16:3 <b>weird</b> 53:22 <b>welcome</b> 30:20 <b>went</b> 39:20 49:19,23 59:21 <b>WHEREOF</b> 73:20 <b>wise</b> 22:16 <b>withdrawn</b> 47:16 <b>witness</b> 18:24 19:6,21 21:12 23:20 28:20 32:20 35:23 39:15 40:24 43:8 48:25 52:17 59:15 62:25 66:10 71:4 73:11,15 73:20 <b>witnesses</b> 15:7 <b>Wonderful</b> 4:18 6:14 <b>word</b> 22:24 40:9 <b>words</b> 62:17 <b>work</b> 25:13 30:15 34:13,15,18 53:22 53:25 55:2,7 <b>worked</b> 8:3 10:5 66:17 <b>working</b> 26:8,8 30:14 30:18 41:11,21 <b>works</b> 9:15 26:5 <b>wouldn't</b> 69:24 <b>write</b> 15:25 31:12 <b>writing</b> 31:4 35:12 <hr/> <b>X</b> <hr/> <b>X</b> 1:2,11 66:5,6 71:2 71:10 72:3,14 <hr/> <b>Y</b> <hr/> <b>Y</b> 66:22,25 72:16 <b>yelling</b> 60:25 64:12 <b>York</b> 1:1,20 2:5,5,9,9 4:4,6 73:4,6,10 <hr/> <b>Z</b> <hr/>
--	--	--	---

ROSATI v. LONG ISLAND RAILROAD, et al.  
Benjamin Gallup --- September 7, 2023

86

<b>Zoom 1:18</b>	<b>35 71:21</b>	<b>900.3.2 28:2</b>	
<b>0</b>	<b>35th 29:13</b>	<b>93-02 4:5</b>	
<b>02 53:14</b>	<b>39 71:23</b>		
<b>032-21 28:9</b>	<b>4</b>		
<b>1</b>	<b>4 71:8</b>		
<b>1:21-cv-08594-JHR</b>	<b>4:27 70:19</b>		
<b>1:7</b>	<b>40 71:24</b>		
<b>10 71:13</b>	<b>42nd 2:9</b>		
<b>10:04 41:15</b>	<b>43 71:24</b>		
<b>10018 2:5</b>	<b>44 71:25</b>		
<b>10165 2:9</b>	<b>48 71:25</b>		
<b>1040 2:4</b>	<b>48th 2:9</b>		
<b>11434 4:6</b>	<b>5</b>		
<b>12 59:21 72:12</b>	<b>5 71:15 72:13,14</b>		
<b>15 71:13</b>	<b>51 72:6</b>		
<b>15th 2:4</b>	<b>52 72:7</b>		
<b>16 72:8</b>	<b>53 72:8</b>		
<b>17 72:7</b>	<b>54 72:9</b>		
<b>18 71:14,17</b>	<b>55 72:10</b>		
<b>19 71:15</b>	<b>56 72:10</b>		
<b>2</b>	<b>57 72:11</b>		
<b>2 71:14</b>	<b>59 72:12</b>		
<b>2:14 1:13</b>	<b>6</b>		
<b>20 72:16</b>	<b>6-1 29:11</b>		
<b>2007 6:21</b>	<b>6-2 29:12</b>		
<b>2020 7:23 71:13,14</b>	<b>6-35 29:10 30:11</b>		
<b>71:17</b>	<b>71:19</b>		
<b>2021 7:23 45:6 57:2</b>	<b>60 2:9</b>		
<b>71:16 72:6,7,8,16</b>	<b>63 72:13</b>		
<b>2022 71:15 72:13,14</b>	<b>65 72:13</b>		
<b>2023 1:12 70:24</b>	<b>651 41:17 71:24</b>		
<b>73:21 74:4,20</b>	<b>66 72:14,16</b>		
<b>20th 73:21</b>	<b>7</b>		
<b>21 71:16</b>	<b>7 1:12 74:4</b>		
<b>21st 45:6 49:20 57:2</b>	<b>75 26:8,9</b>		
<b>23 71:16</b>	<b>8</b>		
<b>26 71:18</b>	<b>801 28:2 29:14 30:12</b>		
<b>28 71:19</b>	<b>71:19</b>		
<b>3</b>	<b>9</b>		
<b>30 71:20</b>	<b>9 71:16 72:6</b>		
<b>30CDS 34:22,23</b>			
<b>32 71:20</b>			